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BULLETIN OF THE UNIVERSITY OF WISCONSIN

NO. 352

HISTORY SERIES, VOL. 2, No. 2, PP. 321-478

COLONIAL PRECEDENTS OF OUR NATIONAL LAND
SYSTEM AS IT EXISTED IN 1800

BY

AMELIA CLEWLEY FORD

Instructor in History
Milwaukee-Downer College

BRIGHAM YOUNG UNIVERSITY

A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
THE UNIVERSITY OF WISCONSIN
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INTRODUCTORY NOTE

The object of this paper is to exhibit the continuity that exists between the colonial land systems and that system framed by the national legislators from 1785 to 1800. As has been said, seemingly new legislation was founded on the best of colonial precedents. The men in Congress drew chiefly on their own knowledge and experience of colonial land practices for the ideas embodied in the land laws; and "keen discrimination was used in recommending the best features of the existing systems." No complete account of the colonial land systems is intended. Only those customs and laws will be mentioned which throw light upon the relation between the colonial methods of dealing with public lands, and the federal system as it was in 1800. Whatever indicates an evolution of the federal plan from colonial beginnings will be emphasized.

By the close of 1800, the chief elements of the national system had been incorporated by the three laws of May 20, 1785, May 18, 1796, and May 10, 1800. These elements were previous survey, rectangular outlines, the township unit, the section, public and private sale, reservations, and administration; and it is precedents of these which will be considered. The principles of land bounties and preemption rights were not a part of the national system till long after 1800, but so large a place do they occupy in colonial land affairs, and so insistent was the demand for their application to the public domain from the time the national government was organized onward, that no discussion of land matters would be complete that did not deal with them. The matter of reservations for education has been omitted as that has already been dealt with by Joseph Schafer in *The Origin of the System of Land Grants for Education*,

Bulletin of the University of Wisconsin, No. 63, Madison, 1902, and by George Wells Knight in his *History and Management of Land Grants for Education in the Northwest Territory, Ohio, Indiana, Illinois, Michigan, Wisconsin*. (New York, 185.)

The following investigation was begun at the suggestion of Dr. Frederick Jackson Turner of the University of Wisconsin, and to him grateful acknowledgments are chiefly due for inspiring comment and generous recognition. The rare opportunities offered by the Wisconsin State Historical Library have been appreciated, and cordial thanks are due the members of its staff, through whose courtesy its resources have been made available to the fullest extent. Indebtedness must be expressed to Dr. J. Franklin Jameson of the Carnegie Institution at Washington for valuable information regarding pertinent material in the MSS. of the Library of Congress.

Madison, Wisconsin, June, 1908.

AMELIA CLEWLEY FORD.

COLONIAL PRECEDENTS OF OUR NATIONAL LAND SYSTEM AS IT EXISTED IN 1800

CHAPTER I

RECTANGULAR PRINCIPLE IN COLONIAL SURVEYS

The principle of rectangular surveys was established in our national land system by the land ordinance of May 20, 1785. This was not a new principle. As early as the seventeenth century the colonists were familiar with the idea of laying out single tracts, whether large or small, in a rectangular form. Theoretically, the idea appeared in the grants of the colonies themselves, in the township grants, in various plans for colonization, and in official instructions to the governors; actually, however, it was practiced only in the boundaries of some of the colonies, the ground plans of many cities and town centers, the division of town common lands, and now and then in the outlines of individual tracts, particularly along the rivers. These actual beginnings of the rectangular system in the seventeenth century will form the subject of the first chapter.

BOUNDS OF THE SEVERAL COLONIES

The first conspicuous instance of regular outlines appears in the bounds of some of the colonies themselves, which are remarkably straight on the north and south. This is because of the fact that in defining territorial limits on this vast new continent, parallels of latitude instead of natural objects were often used. Where parallels were not expressly mentioned, such phrases as "directly into the main land," "west in a direct line," "a straight line due north," carried out the same idea.

Sometimes meridians of longitude were also used to mark the western boundary.¹ The intention was, without doubt, to lay the American grants at right angles to the shore.² Douglass, in his "Summary, etc. of the British Settlements in N. A.," says the first notion was to lay out settlements of one hundred miles on the shore, and one hundred miles back into the country, so as to make districts one hundred miles square.³ This assertion was based on the grant of 1606 to the Virginia Company. The charter to the Council of New England outlined roughly a parallelogram extending from sea to sea between forty and forty-eight degrees north latitude.⁴ In the grant of Pennsylvania in 1681, this method of bounding territory was carried out more fully. Penn's tract was bounded on the east by the Delaware river, beginning twelve miles north of New Castle, and also "by a Meridian Line to bee drawne from the head of the said River unto the said three and fortieth Degree;" on the north, by the beginning of the forty-third parallel; on the south by a circle drawn twelve miles from New Castle northward and westward to the beginning of the fortieth parallel, and thence by a straight line west. The western limit was to be five degrees of longitude reckoned from the eastern boundary.⁵ In spite of the words of the charters, much irregularity characterized the real bounds of the colonies because of ignorance concerning the topography of the new country, and because of the consequent conflicting grants. Jefferson's plan, one hundred years after the Pennsylvania grant, of forming the western territory into states bounded by parallels and meridians, was thus not a new scheme.⁶ It simply applied to many districts at once the same kind of limits which the royal grants had assigned to several separate tracts.

¹ Ben : Perley Poore, *The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the U. S.*, passim.

² *Pa. Archives*, 2nd Series, XVIII, 127-180, contains *An Examination of the Conn. Claim to Lands in Pa.*, by Rev. Wm. Smith, D. D., Provost of Univ. of Pa., written in 1774, in which the early colonial bounds are discussed in detail.

³ William Douglass, *Summary, . . . of the British Settlements in N. A.*, I, 204, 242.

⁴ Poore, *Charters and Constitutions*, I, 921; II, 1888.

⁵ *Ibid.*, II, 1510.

⁶ Jefferson, *Writings*, (Ford) III., 408. (This is the edition always referred to unless otherwise specified.)

GROUND PLAN OF CITIES AND TOWNS.

Within the colonies, instances of rectangular surveys are frequent. Some of the cities furnish the best examples. The beautifully regular, checker-board arrangement of Philadelphia was preceded by that of the city of Charleston in 1671 which was carefully divided into square plots by straight streets at right angles to each other in the same fashion as the Quaker city.⁷ Much earlier than either of these the city of New Haven was laid out according to an attractive plan of rectangular lots surrounding a central square.⁸ New Orleans, St. Louis, Mobile, Savannah, and the Georgia town of Ebenezer, might also be cited as illustrations of this method of right-angled streets.⁹ One of the plans of the Ohio company in 1753 was to build a square fort, and lay off an adjacent tract for a town in squares of two acres each.¹⁰ Fort Detroit enclosed a settlement of about one hundred houses "built in a regular manner with parallel streets, crossing each other right angles."¹¹ In short, squares and straight streets was the characteristic arrangement¹² of American towns and village centers.¹³ Norwich, Connecticut, and Albany, New York are good examples of exceptions to this rule.¹⁴ In those towns there was an irregular arrangement of lots caused by their being grouped along the banks of a winding river.

⁷ For Philadelphia, see Proud, *Hist. of Pa.*, I, 242-243; *Memor. Hist. of Philadelphia*, (N. Y. 1885,) I, 19, 21, 22, 32, 33; Hazard, *Annals of Pa.*, 594-595; also *Pa. Archives*, 3rd Series, IV, two maps at the end. For Charleston, see Rivers, *Sketch of Hist. of S. C.*, 371, 377, 387, 393; S. C. Hist. Soc. *Colls.*, V, 343, 361. Osgood, *Am. Colonies*, II, 56, quoting Shaftesbury Papers, 342, 361.

⁸ For New Haven, see E. E. Atwater, *Hist. of Col. of New Haven*, 75-77. See map oppos. title page.

⁹ Hulbert, *Crown Collection of Photog. of Amer. Maps*, II, Nos. 3, 9, 15, 16; Winsor, *Westward Movement*, 172-173.

¹⁰ Christopher Gist's *Journals* (W. M. Darlington), 236-237.

¹¹ Hutchins, *Topog. Descr. of Pa., Va., N. C., Md., etc.* (1778), p. 48.

¹² Judd, *Hadley, Mass.*, p. 23. See also Sheldon, *Deerfield*, I, 17-18; Temple and Sheldon, *Northfield*, 104.

¹³ James Whitelaw, surveyor-general of Vermont, recorded in his diary, in 1773, that a certain Pennsylvania town was laid out in squares with straight streets, "like all other American towns." *Proceedings of Vt. Hist. Soc.*, 1905-1906, p. 135.

¹⁴ Hulbert, *Crown Coll. of Maps*, II, 35-39, for Albany. F. M. Caulkins, *Norwich, Conn.*, p. 67.

DIVISION OF COMMONS IN NEW ENGLAND TOWNS

It is, however, in the method of dividing up the common lands of the New England towns that the most interesting evidence is found of the right-angled plan. As has been shown by various writers, these towns reproduced many institutions of the village in England under the manorial system. One of these was the apportionment of the land in strips among the different proprietors of the town in such a way that one holding included lots in several places. A comparison of a map¹⁵ of the three river towns of Connecticut, Hartford, Wethersfield, and Windsor, with the map of Hitchin manor given in Seeböhm's book, "The English Village Community,"¹⁶ shows certain differences as well as resemblances. In both cases, the fields are alike in being cut up into very many small strips, most of which are rectangular, but some irregular in shape. But in the English fields there is little or no orderly arrangement of the strips; everywhere there are little groups of them laid out in a haphazard fashion without any relation to each other or to the highways. In the New England fields, on the contrary, one is at once struck by the extreme regularity of arrangement. The small oblong strips are, in nearly every case, grouped together in a few long rows or tiers. These tiers are often parallel, but sometimes one tier will be at right angles to another. The cause of this regularity is that the strips or lots are laid off from one or two (sometimes more, according to the size of the field), main base lines, usually a river or highway; each field is thus a parallelogram divided into tiers of small, usually equal, parallelograms. So early were the common lands thus laid out by men who had up to that time been familiar with the irregular method, that it seems as if the plan must have been one of the first products of the new American environment. Under the stimulus of unlimited area and an untouched soil, the newcomers at once improved the old system of dividing land.

¹⁵ C. M. Andrews. *The River Towns of Conn.*, in Johns Hopkins Univ. *Studies*, VII, 4, 61. See also A. K. Teele, *Hist. of Milton, Mass.*, for map opposite p. 16.

¹⁶ Frederic Seeböhm, *The English Village Community*, maps opposite title page and pp. 2, 6, 26.

The new colonial idea of orderly arrangement was adopted, with the result that instead of many very small holdings, irregularly grouped, there were long stretches of lots laid out at right angles from a very few straight lines or bases. In this arrangement one sees in miniature the great base lines of the future national system, with the tiers of rectangular townships erected upon them.

This system of laying out the common lands with extreme regularity relaxed considerably in the eighteenth century. Irregular outlines for individual tracts became frequent under the practice of making "pitches."¹⁷ This was the custom of taking up a piece of land wherever desired in the unoccupied land of the town, and in principle was identical with the practice of indiscriminate location common outside New England. Sometimes proprietors used this method in making a division of land; rights were drawn by lot, and a certain day was assigned each on which to "make his pitch."¹⁸ Occasionally services were paid in land to be pitched in any vacant tract.¹⁹ The town of Bradford, Vermont, and many others in that state, were largely taken up by pitches.²⁰ If a lot drawn by a proprietor was unsatisfactory, he could sometimes pitch another.²¹ In 1697, Connecticut allowed the soldiers to pitch their bounty lands wherever they pleased in any part of the conquered territory.²²

In form these pitches were usually irregular. A field in Deerfield, Massachusetts, laid out in this way in 1736, resembled on the plan "a pile of carpenter's tools thrown down at random."²³ Attempts were made, however, to have them regular and contiguous. The proprietors of Cornwall, Vermont, voted in 1774 that each man's pitch was to be laid in a square form; an exception to this was made by express vote in the case of Asa Blodget who settled on a bend of a creek, called an Ox Bow. This requirement of form was abandoned in 1778.²⁴

¹⁷ Eggleston, *Land System of the N. Eng. Col.*, 43.

¹⁸ Sheldon, *Deerfield*, I, 503; Williams, *Danby, Vt.*, pp. 22, 23, 39.

¹⁹ Matthews, *Cornwall, Vt.*, 33, 37, 41.

²⁰ Thompson, *Hist. of Vt.*, part III, p. 25; Hiel Hollister, *Pawlet, Vt.*, 10; Hibbard, *Rupert, Vt.*, 16-17.

²¹ Williamson, *Belfast, Me.*, p. 75.

²² *Conn. Col. Rec.*, 1689-1706, p. 186. October, 1696.

²³ Sheldon, *Deerfield, Mass.*, I, 496.

²⁴ Matthews, *Cornwall, Vt.*, 36, 39.

It is interesting to notice that such squarely built cities as Philadelphia and Charleston seem to have influenced their environs in the direction of regularity. The liberties of Philadelphia were divided into tracts which varied in size but in nearly every case were rectangular.²⁵ A map preserved in the Shaftsbury papers shows the outlying districts of the original city of Charleston marked off into long rectangular strips as regular as many a tier of lots in a New England field.²⁶ Probably the desire not in any way to retard settlement caused the proprietors not to insist on this regularity in all grants.²⁷

FORM OF COLONIAL SURVEYS

Considering colonial surveys in general, outside the cities and towns, one is struck by the utter lack of any regular system. Freedom of location prevailed throughout the colonies, though to a less extent in New England than elsewhere; and it was this principle of choice that controlled the order, place, and form of surveys. Land was taken up by individuals or communities wherever convenient, without having been previously laid out.²⁸ The form of a tract was governed by the desire to include so far as possible only desirable land, or to employ natural objects as boundaries, or, in the case of a township, by the need of combining a proportionate amount of upland and meadow land. Consequently there was great irregularity of shape and little relation between the various surveys. The matter was made worse by the inaccurate instruments, negligent surveyors, and the inevitable difficulties attending the work of surveying in a new, heavily forested country. In the middle and southern colonies, in which the warrant system of taking up land prevailed, the irregular character of surveys was most marked. The bad effects of such a system were well described by Governor Sharp of Maryland

²⁵ See map at the end in *Pa. Archives*, 3rd Series, Vol. IV.

²⁶ See map accompanying *Centennial Address* by W. A. Courtenay, in *The Centennial of Incorporation, 1883, Charleston, S. C.*; also in *Charleston Year Book, 1883*. Also map of S. C., by Thomas Jeffrys, London, 1757, made from DeBrahm's surveys.

²⁷ S. C. Hist. Soc. Colls., V, 284-285.

²⁸ Jefferson, in *Notes on Virginia (Writings, (Ford) III, 241-242)*, gives a clear account of the Virginian method of acquiring land and laying it out.

in a letter to Lord Baltimore in 1754.²⁹ He wrote: "The method always followed here of locating Land Warrants by selecting the most rich and fertile Land without regarding any regularity of its Area, or making one of its courses coincide with the Boundary of the adjacent prior patented Tract has left the Land hitherto remaining vacant and uncultivated, in such irregular, small, and incommodious parcells that it is thought scarcely worth any one's While but those on whose possession it joins to take it up even at the common Rate." Similar conditions prevailed to a worse degree later in Kentucky and Tennessee, where surveys were hopelessly confused and shapeless.³⁰

In New England there was less irregularity than elsewhere because of the township system; but that is far from saying that the surveys were regular. The townships were rarely square, though usually bounded by four straight lines. A map of Cambridge in the first few years looks like the boot of Italy.³¹ The phrase "miles square" referred chiefly to quantity or contents, not to form. Mention was sometimes made of a tract of the quantity of six miles square which should not exceed eight miles or ten miles in length. One tract five miles square was in the form of a triangle.³² Moreover, contiguity was neglected here as under the warrant system, and "gussets" and "gores" were common in New England land history.

But along with these loose, haphazard methods everywhere of staking out bounds, there appeared here and there signs of a better order. The form of single surveys received considerable attention in the North and South alike. From the beginning, the Massachusetts and Connecticut grants required lands to be laid out "in a convenient form," "in a comely form," "in the best form the place will bear," or "in such form as is most convenient for farms already laid out there."³³ Though the phrase

²⁹ *Archives of Maryland*, VI, 53.

³⁰ See Shaler, *Kentucky*, pp. 49-52; Roosevelt, *Winning of the West*, II, 93-94, 311; and *Debates of Congress*, 20th Congress, 1st Sess., IV, part 2, pp. 2515, 2518, 2526 (April 29, 1828); V, 162, 207 (Jan. 5 and 13, 1829), for discussion of irregular surveys in Kentucky and Tennessee.

³¹ Paige, *History of Cambridge, Mass.*, map opposite p. 3.

³² For various references of this kind see *Mass. Rec.*, IV, part II, 542, 558; V, 23, 36, 342. *Conn. Colon. Rec.*, 1636-1665, pp. 133, 395-396.

³³ *Mass. Rec.*, IV, part II, 316, 409; *Conn. Colon. Rec.*, 1665-1677, p. 200; 1689-1706, p. 294.

"miles square" was not as a rule, interpreted literally, yet it was to be observed wherever the land or previous grants would permit, and its constant repetition kept the theory present in people's minds. That it was far from being an empty letter is shown by a petition from the inhabitants of Groton, Massachusetts, in 1656; they requested that "they be not strictly tyed to a square forme in their Line Laying out."³⁴ Tracts were frequently square or rectangular, and sometimes rhomboidal.

Theoretically, the South was not less punctilious regarding form than New England. For more than a century and a half the instructions to surveyors in Maryland required surveys to be as regular and square as possible; this, however, was a dead letter.³⁵ A North Carolina law of 1715³⁶ required tracts taken up wholly in the woods, to be upon a square if it could be admitted with regard to rivers, creeks, or other people's lines. Later, an oblong was allowed, which was not to be more than twice as long as broad. But the country was parcelled out most irregularly, just as if the law forbade instead of authorized regular figures. In Virginia the breadth of a tract had to bear a certain proportion to the length, usually one-third of it.³⁷ The warlike Christian man whom the assembly desired on the frontier in 1701, was to have his abode on two hundred acres laid out in a geometric square or as near thereto as convenient.³⁸ The rectangular form appeared often in New York grants, though there was a decided lack of orderly arrangement. Some Pennsylvania manors were regular.

Beginnings of the rectangular system are most clearly seen in the series of surveys along rivers.³⁹ The early Virginia surveyors, in laying out lands on a river, proceeded according to a plan, which, had it been carried out accurately, would have resulted in an arrangement remarkably similar to our pres-

³⁴ Samuel A. Green, *Histor. Sketch of Groton*, p. 15.

³⁵ John Kilty, *The Land-Holder's Assistant*, etc., 277, 285.

³⁶ *Public Acts of N. C.* (Newbern, 1804), I, 15.

³⁷ Hening, *Va. Statutes at Large*, X, 432; Jefferson, *Notes on Virginia*, in *Writings*, III, 242.

³⁸ Hening, III, 207.

³⁹ *N. Y. Doc. Rel. Col. Hist.*, VI, 68, refers to the famous oblong patent along the Mohawk river; it was six miles in width. See *Chronological map of Prov. of N. Y.*, Sauthier, London, 1779.

ent national system. This plan⁴⁰ is described in detail in a paper written probably by Governor Tazewell, and is worth giving quite fully. In the beginning and throughout the whole of the seventeenth century most of the grants were situated upon the larger streams. The surveyor adopted the bank of the river or creek as his base, and from each end of this line, ran and marked a straight line at right angles to the distance of one statute mile, as a rule. "The same course was pursued with the next survey of the land contiguous to the first; the base of this was established on the same water-course, as before; and from the farther extremity of this base a side line was drawn, parallel to the side line of the contiguous survey, which side line was also extended one mile and marked as before. Each succeeding survey being made in the same manner, the first grants constituted a series of parallelograms, all fronting on the water course and running back the distance of one mile from its margin." When the land along the stream had all been taken up, it was customary to sue out patents for the lands in the rear of these estates, a line parallel to the original base line on the river being adopted as a new base line by the surveyor; and the whole process of outlining the new tracts was gone through with as in the first cases. The reason this procedure failed to produce regularity was chiefly because of the great defects in the early surveys. No allowance was made for the inaccurate instruments used, but arbitrary allowances were often made for useless lands, which were left out of account on the plat as if they did not exist, yet the limit was stated as one mile only. The side lines were often lengthened or shortened to end at some natural object, though nominally they were a mile long. Errors and divergences from the straight line caused by dragging the chain through dense undergrowth were common; and finally, the general carelessness of surveyors has to be added to all these other causes.

The same conditions as to theory and practice prevailed in

⁴⁰ *Va. Hist. Register*, II, pp. 190-194. Bruce, in his "*Economic Hist. of Va.*," speaks of it as "an admirable paper, written, presumably, by Governor Tazewell, one of the ablest and most learned lawyers produced by Virginia, etc.," I, 537-538. The article is signed simply "T."

Maryland.⁴¹ Lands were to be laid out as nearly as possible in the shape of a parallelogram, and the *long lines* of the surveys were not to be run upon the waterside. The lines following the river or bay should not exceed the length of fifty "poles" for every fifty acres surveyed. Early maps show that grants along the Hudson, the Mohawk, and the South Carolina rivers, were also, on the whole, rectangular.⁴² In fact, this method was general, throughout the colonies. Everywhere at first, settlement had followed the rivers and coast; and it became the characteristic American practice to lay out the river bottoms in contiguous, rectangular tracts having a common base line, the river bank. This system was identically the same as that according to which the common lands of the New England towns were marked out. And fundamentally, the principle of our modern system is not different; there is the same idea of rectangular divisions erected on a single base line, and the constant repetition of this idea forms the parallel rows of townships. If the colonial plan had been developed somewhat; if the riparian lots had been made equal as well as rectangular, and if, as settlement proceeded inland, the same process had been carried out on new base lines, parallel to the first,—we should then have had many of the essential features of the present national system present in early colonial practice. But away from the rivers, the rectangular method broke down, partly for the reasons given previously regarding the Virginia surveys, and partly because the unhampered exercise of individual choice in regions where the topography of the country and the quality of the land varied greatly, necessarily produced irregularity and an intolerance of arbitrary bounds fixed according to theory. Yet, in the early surveys of the New England town commons and of the river lands everywhere, is found the germ of the modern rectangular system. In the middle and southern colonies, the great freedom of choice that was permitted, prevented much improvement in

⁴¹ Kilty, *The Land Holder's Assistant*, 277.

⁴² *Chorographical map of the Province of N. Y. in N. America*, Sauthier, London, 1779. Map of S. C., composed from surveys under the authority of Wm. De Brahm. Engraved by Thomas Jeffrys, London, 1757. Thomas Hutchins wrote in 1778 that for eight miles above Fort Detroit and for eight miles below, on both sides of the river, the country was divided into regular plantations. Hutchins, *Topog. Descrip. of Pa., Va., N. C., Md., etc.*, p. 49.

the form of surveys, though the right-angled form continued to be familiar in theory. In the North, community control was strong enough to carry out a regular plan, and as time went on, the form of town surveys tended more toward the checker-board pattern, as is abundantly evidenced by maps of new towns in Maine and Vermont.⁴³

PROPOSED RECTANGULAR LAND SYSTEMS

Thus far only the actual practice in surveying has been considered; and it appears that, with the exception of certain cities and town common lands, nowhere was there any systematic survey, previous to disposal, of a territory either as a whole or in a small block, according to a definite rectangular plan. Land was taken up wherever desired, and then laid out without any reference to a large general plan. But such plans were more than once thought of, and though all of them came to naught, yet they are well worth considering because of the significant ideas they contained. The most important of these schemes was that developed by the Carolina proprietors. The first proposals of 1663 contemplated no other arrangement regarding land than that already in operation in Virginia and Maryland, by which lands were laid out indiscriminately in piecemeal. But in the agreement of 1665 with the Barbadians, a new idea was introduced.⁴⁴ It was desired that the lands might be more "regularly layd out" and that all persons might be "the better ascertain'd of there titles and possessions," therefore it was directed that each county should be bounded, and should not exceed forty miles square or sixteen hundred square miles. The lands (outside cities, towns, and lots adjacent thereto), were to be divided into tracts varying in size from 2200 acres to 22,000 acres each.⁴⁵ These same regulations were laid down in the instructions of 1667.⁴⁶

In 1669 an entirely new plan was introduced, soon after

⁴³ Williamson, *Belfast, Me.*, map opposite p. 66. Hubbard and Dartt, *Springfield, Vt.*, p. 7 for map. F. P. Wells, *Newbury, Vt.*, map oppos. p. 36.

⁴⁴ *N. C. Records*, I, 75-92.

⁴⁵ *Ibid.*, I, 90-92.

⁴⁶ *Ibid.*, 169, 173-175.

Shaftesbury (then Lord Ashley) became the leading proprietor, and John Locke, his adviser and assistant, the unofficial secretary of the company. How much credit for the new territorial arrangements belongs to Locke, it is hard to say. As the change was made coincidently with Locke's becoming actively concerned in the management of the colony, it seems very likely that many of the new suggestions came from him. The fundamental constitutions of 1669 contained no further reference to land than that each signiory, barony, and colony should be of 12,000 acres.⁴⁷ It was in the various instructions sent out in 1669, 1671, 1672, and 1682, but particularly in the agrarian laws of 1672, that the new plan was specifically set forth.⁴⁸ As stated in the preamble the proprietors agreed upon the so-called "agrarian laws" for the reason that "the whole foundation of the government is settled upon a right and equal distribution of Land, and the orderly taking of it up is of great moment to the welfare of the Province."⁴⁹ The method outlined to accomplish these aims was that of dividing the whole country up into squares of 12,000 acres each, corresponding practically to townships. The details of the plan will be considered in the chapter on townships. These squares were to be combined into counties. Instructions dated Nov. 21, 1682, gave additional details. Plots facing the river were to be perfectly rectangular; but tracts a certain distance inland from the river were to be in a square figure. Lots along a navigable river were to be either contiguous or sufficiently separated so that the space between would not be too little for a plantation, and thus become useless to the proprietors.

There is no evidence that this well-thought out scheme was carried into execution. It was noteworthy for containing the modern principles of previous survey into square divisions and square subdivisions bounded by east and west and north and south lines. It also set forth the idea of progressive settlement, or an advance in settlement only as the lands first opened up

⁴⁷ Ibid., I, 188.

⁴⁸ W. J. Rivers, *A Sketch of the Hist. of South Carolina*, Appendix, pp. 348-349, 355-359, 366-367, 399-402.

⁴⁹ Ibid.,—these agrarian laws found on pp. 355-359. June 21, 1672.

were filled—an idea which barely failed of being incorporated in the land ordinance of 1785.

William Penn had no developed plan like that of Shaftesbury and his associates, but he deserves mention in this connection because of the large view he took of the province as a whole, and because of his desire to have the land taken up in a series of townships rather than in the haphazard fashion of individual locations. County justices were enjoined “to endeavor to seat the lands by way of townships, as three thousand acres among ten families; if single persons, one thousand acres among ten of them, laid out in a long square, five or ten of a side, and a way of two hundred feet broad left between them, etc.”⁵⁰ In the warrants for laying out land Penn introduced the clause, “according to the method of townships adopted by me.”⁵¹ This method was very soon lost sight of, and promiscuous surveys according to the will of the purchasers, became the rule.⁵²

The source from which Penn and the Carolina proprietors obtained their ideas as to the “orderly takeing up of land” is not evident. As they began their colonizing work late in the seventeenth century, it is possible they may have profited by the experiences of the earlier colonies. Or they may have been influenced by the surveys made in Ireland between 1654 and 1658, under the Cromwellian settlement.⁵³

⁵¹ Shepherd, *Prop. Govt. in Pa.*, Columbia Univ. Studies, VI, 48.

⁵² See *Memorial Hist. of City of Philadelphia*, I, between pp. 42-43, for facsimile of Thomas Holme's map of the Province of Pennsylvania, 1681.

⁵³ For this matter see J. P. Prendergast, *The Cromwellian Settlement of Ireland*, (2nd edition, 1870); Dr. Moritz Julius Bonn, *Die Englische Kolonization in Ireland*; S. R. Gardiner, *Hist. of the Commonwealth and Protect.*, III, 324-328.

Parliament had set aside ten counties in Ireland, after the conquest, to satisfy the arrears due the army and to cancel a debt owed to a company of adventurers for financial assistance. The counties were divided by baronies equally among the soldiers and adventurers. The lands of the former were surveyed by Sir William Petty, surveyor-general, in 1655; each barony formed a unit, and was subdivided into lots arranged in a fixed sequence called a file or string of contiguity. By this means, land could be set out without intervals and without picking and choosing. The adventurers quartered and sub-quartered their baronies into rectangular divisions all of which were designated as “N. E. No. 1,” “N. W. No. 4,” et cetera, according to position. These baronies were later rearranged by Petty in the same way as the soldiers' lands. Prendergast, *The Cromwellian Settlement* (1870), 83, 112-113.

Shaftesbury, the leading Carolina proprietor, and Penn, must both have had ample opportunity to know about these Irish surveys. The former, then known as Anthony Ashley Cooper, was a member of the Earebones parliament which

The failure of the proposed Carolina land system was due to the character of the country. In the first place, a square form was not adapted to the general lines of settlement. Immediately after receiving the instructions to lay out a square county, the surveyor-general wrote back that it could be done only by running "on the Verges of the Rivers and Creekes where generally men seat, and where for the most part, the plantable land lies so disadvantageous to your Honores Interest and the Inhabitants Welfare; that no reasonable line of communication will be able to unite them either for defence or Traffick."⁵⁴ He suggested a different boundary, and also that men be allowed to take up what lands they pleased at an easy rate, after the Virginia custom. In the second place, desirable tracts were distributed so irregularly that any system of taking up land just as it came, having chief regard to its form and place in an artificial scheme, was wholly impracticable. The strong protests from the colonists brought this out very clearly. In opposing the second plan of 1665, the assembly stated that in all their land wherever taken up, pine, swamp, and marsh formed the greatest part of it; and they assured the proprietors that "that kinde of division appointed by the concessions is not at all practicable heare, because the good lands do noe where lye so contiguous nor soe in any place as equally to accommodate the whole generall lot. * * * And a very great mischife it would bee to any whose lott shall fall where there is not a foote," et cetera.⁵⁵ When the

instructed the commissioners for Ireland to make the survey of forfeited lands and which passed the measure for the planting of Ireland. In 1654 he was one of Cromwell's council of state. (W. D. Christie, *A Life of Anthony Ashley Cooper*, I, chaps. III, IV, V.) As late as 1673, Essex wrote him from Dublin Castle to use his influence to prevent a grant of valuable land to the Duchess of Cumberland, discussed certain land problems, and incidentally complained of Sir William Petty as a "grating man." (Ibid., II, appendix IV, pp. XLVII-LIV.) Penn's relations with Ireland were even closer. When a very young man he was for a while under the tutelage of the duke of Ormond, lord-lieutenant of Ireland, and for years prominent in Irish affairs. In 1667, he took charge of his father's estate in the county Cork, and reorganized it. (A. C. Buell, *William Penn*, 65-67.) Cork had been reserved to the English government, but was surrounded on three sides by the counties surveyed for the soldiers. Penn was also a friend of William Petty's and corresponded with him regarding his American possession. (Hazard, *Annals of Pa.*, 584-585.) No evidence, however, has been found to show any positive connection between the surveys in Ireland and those in the colonies of the new world.

⁵⁴ *N. C. Rec.*, I, 99-101.

⁵⁵ *Ibid.*, 146-47.

new arrangements of 1669 were promulgated, the colonists made another strong and reasonable argument against them. In a long address dated by the sender, Mar. 21, 1670, (O. S.) they said, "We must further acquaint your Honors that the land not lyeing as your Honors were formerly informed in England, we cannot possibly observe all your Honors directions therein, for all the land being Interwoveen, with great Creeks, and Marshes, and sometimes a neck of land running between two Rivers, half a mile, a mile, between River and River, and such small depths, as will not answere a depth, sufficient to the breadth of any great quantity of land, as your Honors have directed to be laid by the waterside, and most of the land will not admit of the joining of one line upon another, or the exact fifth part of a depth, by reason of the aboundance of creeks and marshes, and irregular points of land as afores'd, but as neere as we can, we shall observe your Honors' said Instructions," et cetera.⁵⁶ This was an excellent description of the topography of the region, and furnished the best objection possible to the proposed plan. But a more telling argument with the proprietors was the following one which the settlers added later on: "And now more people are come, we find that if they be not suffered to choose their own conveniencyes, it may prove a great retarding of a speedy peopling this Country; for non omnibus arbusta juvant; some delighting to be near the sea, and others from it, the denyall of which we find to have been fatall to the late Settlement of Santa Lucia," etc.⁵⁷ The disadvantage of allowing free choice was that it led to a scattering of the population, an evil which the surveyor-general, Florence O'Sullivan sought to correct by obtaining authority to require people to take up land as it lay, the good and bad together.⁵⁸ But this authority was never given, and Carolina lands were laid out as in the other colonies, according to an economic, not an academic plan.

There seems to have been in this southern region something stimulating to idealism, for it gave rise to a second scheme of settlement later on, more complete and with a closer resemblance to our national system, than that drawn up by John Locke. In

⁵⁶ S. C. Hist. Soc. *Colls.*, V, 284.

⁵⁷ *Ibid.*, 284-285.

⁵⁸ *N. C. Rec.*, I, 207.

1717 Sir Robert Mountgomery secured a grant of the country between the Altamaha and the Savannah rivers, and named it the margravate of Azilia. The same year he published a pamphlet⁵⁹ entitled "A Discourse concerning the Designed Establishment of a New Colony to the South of Carolina in the most delightful Country of the Universe," in which he set forth his territorial plan which was a system of square districts twenty miles on a side, and subdivided into smaller squares. This plan like that of the Carolina proprietors of 1669, anticipated the modern system in regard to the principle of previous rectangular surveys of territory into square units, these in turn being subdivided into smaller squares. Again like the Carolina plan, it differed from the present system in having a much larger unit, which corresponded to a county rather than to a township.⁶⁰ A combination of the two colonial schemes would have produced a result astonishingly similar to our national plan, as the sub-divisions of the Carolina province were a little more than equal to half a township, while the smaller divisions of Azilia were identical in form and size with a modern "section."

When the Georgia colony was undertaken in 1732, it was planned to divide the country into square districts of 20,000 acres each, these to be cut up into shares of fifty acres. But this scheme, also, failed of execution.^{60(a)}

The only other attempt in colonial days to formulate a system for locating and disposing of lands was made by the British government just on the eve of the Revolution. The continual troubles and confusion regarding land matters, especially in New York, convinced the home authorities that a complete alteration in method was imperative. A new set of instructions, drawn up in February, 1774, was sent to the provincial governors directing actual surveys to be made from time to time of ungranted lands which it was desirable to throw open to settlement.⁶¹ The tracts should be divided into lots of not less than

⁵⁹ Peter Force, *Tracts and other Papers, etc.*, I, No. 1; C. C. Jones, *Hist. of Georgia*, I, 70-74.

⁶⁰ Shaftesbury's counties were to contain 480,000 acres; but single squares, 12,000 acres; Mountgomery's squares contained 256,000 acres, while a modern township contains only 23,040 acres.

^{60a} Bowen, *The American Portion of the Complete Atlas*, (1760), p. 641.

⁶¹ *N. Y. Doc. Rel. to Col. Hist.*, VIII, 410-413.

one hundred acres nor more than one thousand, a map of the surveyed districts, with the separate lots marked and numbered on it, to be hung up in the provincial secretary's office, and duplicates sent to England.⁶² Further instructions related to other important matters of sale, price, reservation, et cetera, which will be considered in their proper places. This plan was thus far less developed than the two earlier ones already described. It made no provision for using the rectangular system in surveying; there was not to be necessarily any regular arrangement of lots. But it expressed one idea fundamental to our present land system, and that was, the absolute necessity of an actual survey of territory previous to any disposal. This was a conviction based on more than a century's hard experience, and had it been carried out, would have been an important contribution to colonial practice.

To sum up the results of the seventeenth century in this matter, there existed in all the colonies scattered evidences of the use of the rectangular principle in surveys. Sometimes it appeared in single grants, either of a vast colony or a small individual holding; sometimes in a series of grants, as in the common fields of New England towns, or in the estates bordering on rivers, and arms of the sea; sometimes in an elaborate form in cities. In theory, as set forth by the Carolina proprietors in 1672, by Sir Robert Mountgomery and the Georgia trustees in the early part of the following century, the rectangular system was developed to such a remarkable degree that in one or the other of their plans, can be found such modern, national ideas as survey previous to disposal, square units of territory, square subdivisions, and the section of six hundred and forty acres. The English government from its long practical experience in colonial land affairs failed to evolve any system till at the very last moment, when it adopted the principle that previous survey was indispensable.

⁶² It is interesting to notice that there was objection to this plan as there had been previously when any system restraining individual choice was proposed. Cadwallader Colden wrote that every person who had seen the new instructions, particularly the gentlemen of the council, were of the opinion that the method proposed was impracticable in the execution. *N. Y. Hist. Soc. Colls.*, 1877, p. 360.

DEVELOPMENT OF THE RECTANGULAR IDEA IN THE 18TH CENTURY
SURVEYS

In the eighteenth century the rectangular form for individual tracts of whatever size was increasingly adopted. The New England towns began to be really square instead of only approximately so. The first example of this seems to have been the township granted to the Stockbridge Indians in 1735.⁶³ The lands within towns newly laid out were divided into rectangular tracts which were more nearly equal in breadth and length. A map of the several divisions made in Springfield, Vermont, presents a remarkable resemblance to a checker-board.⁶⁴ A similar development was particularly noticeable in Pennsylvania. In 1763, the proprietor ordered that regular figures of four sides should be generally observed in all surveys.⁶⁵ The board of property in 1775 directed the surveyor, in laying out a certain disputed tract, to take the good and bad land as it came, and to cause the survey to be as much as possible at right angles.⁶⁶ In the southern colonies there was no perceptible advance. The laws and regulations of Virginia, Maryland, and North Carolina continued to demand regularity in form without any result. Some of the Virginia estates along the Shenandoah river were surveyed in the form of parallelograms,⁶⁷ but that, as has been seen, had been done along water courses from early times.

The laws of North Carolina became more definite than those of earlier times. By an act of 1777, it was ordered that every survey should be bounded by natural boundaries or right lines running east and west, and north and south, and should be an exact square or oblong, the length not exceeding double the breadth, except where surveys were made on any navigable water, or where such lines would interfere with lands already granted.⁶⁸ The effect of such regulations was, however, entirely

⁶³ Holland, *Hist. of West. Mass.*, II, 586. See early map of Massachusetts showing township bounds.

⁶⁴ Hubbard and Dartt, *Hist. of the Town of Springfield, Vt.*, p. 7.

⁶⁵ *Pa. Archives*, 2nd Series, VII, 266.

⁶⁶ *Ibid.*, 3rd Series, I, 394-395.

⁶⁷ *Va. Hist. Mag.*, XIII, 116-117, n. Article by Chas. E. Kemper, *Early Westward movement of Va.*

⁶⁸ *Public Acts of N. C.*, I, 207.

neutralized by the permission to use natural boundaries as an alternative.

All these facts regarding the eighteenth century surveys are of significance only as showing that, by the close of the colonial period, regular figures of either the rectangular or square type was the accepted principle throughout the colonies, though on the part of the South it was chiefly in theory as opposed to practice on the part of the North. It was the development of this principle in connection with townships during this same pre-Revolutionary period, that will form the subject of the following chapter.

CHAPTER II

PRECEDENTS OF THE TOWNSHIP METHOD OF SURVEY

The township considered as a territorial unit existed in New England from the beginning, though it was at first generally known by the name of "plantation" or "town" rather than "township." Wherever New Englanders went, they carried the township, notably in the beginning to Long Island and to New Jersey. The early settlements in Virginia had much in common with those made later in New England, and bade fair to develop a system similar to that of townships. The plantations were groups of people settled in "towns." When Dale wished to select a site for a new town which he had been instructed to plant, he took a previous "view" of the country, just as later on the general courts in New England were accustomed to do.¹ Again like the New England practice, old towns sent out settlers to form new plantations. Nansemond and Powhatan were thus seated in 1609 by about one hundred and twenty men sent out from Jamestown; Kicoughtan was settled a short time later.² The massacre of 1622 gave the deathblow to this method of settlement, and consequently, to the possible development of townships; though other causes also worked against it. In 1701 Virginia made an attempt to stimulate community settlement on the frontier,³ and offered a tract of land containing between ten thousand and thirty thousand acres, to any society which would accept the terms, but without any result. Towns and village communities existed in New Netherlands, and when that province became New York, towns were established by the law

¹ Alex. Brown, *First Republic in America*, 151.

² Beverly, *Hist. of Va.*, 19.

³ Hening, *Statutes of Va.*, III, 205.

as a part of the system of local government.⁴ But these towns were emphasized chiefly on the civil side; their territorial significance was slight. The charter to William Penn gave him authority to divide the country into towns, hundreds, and counties, but here, also, town meant a civil unit.⁵ Penn, however, desired to have the land actually laid out in townships, and gave instructions to that effect, but the plan was ignored by the surveyors. The Carolina proprietors a few years earlier had attempted the same plan with like results.⁶ New England remained the true home of the territorial township.

EARLY TOWNSHIPS

During the seventeenth century, the New England townships were granted one at a time, in any desirable place hit upon, as new groups announced themselves ready to settle. The form of these tracts was rarely square, though usually bounded by four straight lines, and they often contained a vast deal more land than the grant called for.⁷ Contiguity was a minor concern as is indicated by the many irregular pieces left between the townships, and the attempt of the General Courts to guard against them. The early arrangement of townships is accounted for by the system of "pitches." Connecticut people were fond of this method of locating tracts, whether large or small, and adopted it extensively in settling new regions in the present Vermont and in their Pennsylvania claim. Settlers in the latter place located the first groups of townships wherever they

⁴ G. E. Howard, *Introd. to the Local Constit. Hist. of the U. S.*, 102-103, 110-111.

⁵ Hazard, *Annals of Pa.*, 636. Poore, *Charters and Constitutions*, II, 1512. There is a map of 1681 showing settlements by way of townships in Pennsylvania, in British Archives; see Andrews and Davenport, *Guide to MSS. Materials for the Hist. of the U. S. in British Museum, in Minor London Archives*, etc., p. 74. See *Pa. Mag.*, XIX, 422-423.

⁶ Rivers, *Sketch of Hist. of S. C.*, appendix, 387. Instructions to Andrew Percival in 1674—"You are to grant lands to none that comes to settle under your Govt. but upon condition they settle in townships."

⁷ The general court in 1673 granted Dedham a tract seven miles square, but when it was laid out, it covered a territory of about seventy square miles. Sheldon, *Hist. of Deerfield, Mass.*, I, 487, 488. Hadley contained about eighty square miles after various additions. Judd, *Hist. of Hadley*, 187. Rutland contained 93,160 acres.

pleased, drawing lots to determine the order of precedence.⁸ If any pitch proved to be in a disagreeable situation, the proprietors had liberty to pitch anew, on condition of not interfering with a prior location. Usually individual lots were pitched outside town limits, though they were sometimes made within the towns.⁹

DEVELOPMENT OF THE TOWNSHIP PLAN IN THE 18TH CENTURY

But soon after the close of Queen Anne's war interesting signs of a change appear. The necessity of "preserving a regular face to the frontiers" and of safeguarding sites for future towns caused the Massachusetts general court to begin to insist on contiguity.¹⁰ In addition, the needs of defence brought about the new plan of granting several townships simultaneously, to be located on the frontier. In 1713 the assembly resolved that it was for "Her Majesties Service [that] there be some Townships regularly Planted and Setled in the most Defensible manner, in the County of York in the late Province of Mayne," and five in as many different places were arranged for.¹¹ Another motive leading to a liberal policy in grants was the desire to occupy as much as possible of the territory in dispute with New Hampshire.¹² A committee was appointed in 1715 to hire surveyors to take a plat of the ungranted lands on the frontiers between the Connecticut and Merrimac rivers.¹³ This appears to be the first colonial instance of attempting an actual survey of lands previous to their disposal. Massachusetts had thus advanced to a larger method of dealing with her vacant lands than of having a "view" taken now and then to find a site for a single plantation. Because of the troubled condition of the times, nothing was done in the matter. Five years later, two townships seven miles square were laid in the disputed region on the New York border.

⁸ *Pa. Archives*, 2nd Series, XVIII, 48, 88, 102.

⁹ *Ibid.*, 101, 141.

¹⁰ *Journals of the House of Repres. of Mass. Bay*, 1715. (ed. W. C. Ford), pp 5, 22.

¹¹ *Ibid.*, frontispiece.

¹² Hutchinson, *Hist. of Mass. Bay*, II, 331-332.

¹³ *Journal of H. of R. of Mass. Bay*, 1715, p. 46-47.

FIRST PERIOD: 1727-1740

The time of real accomplishment and activity in land affairs, however, did not begin for New England till about 1727, when a lull in the Indian wars permitted some expansion, and other operations than defensive ones. Plans were made to carry out the ideas of 1713 and 1715, and three new lines of towns six miles square, were projected, to extend from the Connecticut river to the Merrimac, along each side of the Merrimac as far as Penicook, and from the Nichewanock river to Falmouth in Casco bay.¹⁴ This new movement of 1727 was of great significance as it indicated a distinct advance step in colonial methods of disposing of vacant territory. Under the force of certain frontier conditions and the expansionist spirit, the Massachusetts general court had gradually developed the new plan of laying out her vacant lands into rows of contiguous rectangular townships in advance of settlement. The rows were not parallel, nor were the townships necessarily bounded by east and west and north and south lines, or exactly six miles square. Nevertheless, the first step in the formation of a distinctively American system of dealing with public lands had been taken. The plan was not carried into execution till 1736, when seven rectangular townships were laid out, two in Maine and five in Massachusetts near the disputed New Hampshire border. A year earlier, four contiguous townships were opened up on the road from Westfield to Sheffield, to serve as a band of settlement connecting the Connecticut valley with that of the Housatonic.¹⁵ At this same period the Connecticut general court began to consider what was proper or best to do with the unlocated lands in the western part of the state.¹⁶ On the advice of a committee seven townships were laid out in 1733 along and near the Housatonic. They were contiguous and more regular in outline than the earlier townships, but only one or two were very nearly square.

While New England was thus staking out the frontiers into

¹⁴ Hutchinson, *Hist. of Mass. Bay*, II, 331.

¹⁵ J. L. Holland, *Hist. Western Mass.*, I, 166, 169.

¹⁶ *Conn. Colon. Rec.*, 1726-1735, VII, 343, 457-458.

groups of regular townships, in advance of settlement, a similar movement was being carried out at the other extremity of the Atlantic plain by the British government. South Carolina had become a royal province in 1719, and a new interest in its affairs gradually arose.¹⁷ By 1729 energetic steps were taken to open up the interior parts of the colony. At the suggestion of Governor Johnson, the king ordered eleven square townships of twenty thousand acres to be laid out.¹⁸ Nine of these were actually laid out, though not all were square, nor were they all of the required number of acres; they were Kingston on the Waccamaw; Queensborough at the union of the Great and Little Pedee; Williamsburg on the Black; Fredericksburg on the Wateree; Amelia at the union of the Congaree and Wateree; Saxe Gotha, opposite Columbia; Orangeburg on the Edisto; Puryzburg on the Savannah; and New Windsor, opposite Augusta, Georgia. A map of 1757 represents these as parishes with perfectly rectangular outlines, and sometimes exactly square; they each enclosed a town also rectangular, its lines parallel with those of the larger figure.¹⁹

Thus, almost simultaneously, Massachusetts and South Carolina were laying out their frontier lands into rectangular townships previous to disposal. The northern plan, however, was in advance of that arranged for in the South in that it provided for contiguity; the nature of the geography of South Carolina was opposed to this. This royal scheme of territorial division failed as had that of the proprietors years earlier, and for the same reasons. The topography of the country and the method of agriculture adapted to the soil were hostile to community life in townships. But for our present purpose, it is not the failure but the attempt which has significance. It shows that the township plan was being applied, to a certain extent, outside New England, in opening up new territory; and that it found favor with the British government.

¹⁷ In 1721-1723 efforts were made to establish frontier towns on the Savannah river. E. L. Whitney, *Govt. of the Colony of S. C.*, in *Johns Hopkins Univ. Studies*, XIII, 60.

¹⁸ B. R. Carroll, *Hist. Colls. of S. C.*, (New York, 1836) II, 124-125.

¹⁹ Map of S. C. Composed from surveys under the authority of Wm. de Brahm; engraved by Th. Jeffrys, London. 1757.

The settlement of Georgia was also one of the features of the great expansion movement going on in this second quarter of the eighteenth century. Oglethorpe, the founder, had the city of Savannah and the towns, particularly old and new Ebenezer, Frederica, and Sunbury, laid out on a rectangular plan as perfect as that of Charleston or Philadelphia.²⁰ It was also planned to divide the country into square districts of 20,000 acres. Each town also was to be formed into a parish with an extent of about six miles round.²¹ But this method of parcelling out the surrounding country was not carried out, and as the towns dwindled away, there was practically no permanent result from Oglethorpe's plans, as regards the land system.

SECOND PERIOD: 1760-1774

The wave of expansion throughout the colonies was checked between 1740 and 1760 by a fresh outbreak in the series of intermittent wars with the French and Indians. Even before the restoration of peace in 1763, however, people again began to move steadily forward into the wilderness on the north and west, and the township system entered a second stage of rapid development. For the first time the colonies began to deal with their wild lands on a large scale, in Maine, in the disputed region west of the Connecticut river, and in the Wyoming valley of Pennsylvania. Not till a short time before the Revolution was the Ohio valley occupied to any extent.

In the interval between King George's war and the last French and Indian war, Governor Benning Wentworth began to grant townships in the region beyond the Connecticut, with the hope of strengthening the claim of New Hampshire to the disputed country, as against New York. He mapped out on paper a large part of the present Vermont into townships six miles square, and made sales to speculators and settlers.²² The New

²⁰ Chas. C. Jones, *The Dead Towns of Georgia*, for maps opposite pages 11, 45, 141.

²¹ Bowen, *The American Portion of the Complete Atlas*, (1760) p. 641.

²² *Doc. Hist. of N. Y.*, (edit. of 1851), IV, 533, 560, 562, 567, 572, 706. *Doc. Rel. to Col. Hist. of N. Y.*, VII, 615-616; VIII, 383, 385. *Vermont State Papers*, (Wm. Slade, compiler), 13-16.

York authorities and their followers among the new settlers declared these patents were "given precipitately without previous survey or a careful description of bounds, that their very situation [was] not accurately known, except in their relations to others upon which they are described to abutt, and as they stand ranged upon a general Plan of an unsurveyed Territory." With all its defects, however, this bold scheme was a brilliant innovation. To lay out a vast tract of land in blocks or rectangular townships had never before been thought of; at least, never plotted on paper. It was the Massachusetts idea of 1727 carried a long step farther. The later New Hampshire grants were actually surveyed as to some of the lines. In 1760 Joseph Blanchard made a survey along the Connecticut for about sixty miles and marked a tree on both sides the river for every six miles, and numbered it as the corner of the township. Another man carried this line farther along the river; no other actual survey was made on the ground. From these surveys a plan was drawn and three tiers of townships protracted on each side of the river.²³ The towns chartered in the Connecticut valley were described as to bounds from this plan; the purchasers of each township laid out the actual bounds at their own expense. It is likely that a similar survey was made on the western side of the mountains, as many grants of townships there contained the words, "according to a Plan and Survey, thereof, made by our Said Governor's Order, and returned into the Secretary's office."²⁴ Not all the townships were exactly six miles square, nor of the contents of thirty-six square miles. Some were oddly shaped, especially those among the mountains, and some were triangular. Yet on the whole, a map of the state presents the effect of parallel tiers of rectangular divisions, among which are many square outlines. Contemporaneously with the New Hampshire grants, new lands were being divided up elsewhere into townships. In the autumn of 1754, Lieutenant-Governor De Lancey of New York had suggested to the assembly that land

²³ *Vermont Hist. Gazetteer*, II, part 3, 802. From a MSS. account written by a surveyor. *Doc. and Rec. rel. to the Prov. of N. H.*, VI., 627.

²⁴ See the documents printed in the following: Joslin, Frisbie, and Ruggles, *Poultney, Vt.*, 11-14. Matthews, *Cornwall, Vt.*, 22-25. Weeks, *Salisbury, Vt.*, 12-16. Hubbard, *Rupert, Vt.*, 9-12.

should be settled according to this system rather than by patents.²⁵ The suggestion was adopted, and a map of New York in 1779 shows a block of territory on each side the west branch of the Hudson laid out in contiguous, regular townships.²⁶ In the eastern part of Maine which had recently been acquired from the French, Massachusetts had caused twelve six-mile townships to be located in the same manner as above.²⁷ South Carolina had in 1761 laid out two townships on the upper Savannah on the same plan as those of 1731; Londonderry settled by Germans, and Hillsborough containing the town of New Bordeaux, settled by Huguenots.²⁸ In the northern part of Pennsylvania, the Susquehanna company of Connecticut was staking out townships, a few at a time. At five different times before the Revolution, townships there were surveyed either for immediate settlement or in order to be ready in case there was need of them.²⁹ The first ones were "to Contain five miles square of land, fit for good improvements or Equivalent thereto as the land may Suitably accommodate," and to be "as near as may be" to the first townships granted. There was thus no attempt to impose on the surveyors a theoretically regular system, as in the case of the New Hampshire grants. Consequently, the early townships were grouped irregularly along each side the Susquehanna, like blocks tipped at various angles; contiguity and rectangular outlines were often neglected. The river did not form a base line from which townships were protracted at right angles as in the case of the Connecticut river surveys by Governor Wentworth. Five miles on every side was the usual size of a township in the Susquehanna Company's purchase, and six miles square in the purchase east of the river.³⁰ In strong contrast with the irregularity of the river townships, there was laid out on each side of the Susquehanna, some distance away, a large block of ter-

²⁵ *Doc. Hist. of N. Y.*, (1851) IV, 1052.

²⁶ *Chorographical Map of New York*, Sauthier. London. 1779.

²⁷ Williamson, *Hist. of Maine*, II, 361.

²⁸ E. L. Whitney, *Govt. of the Col. of S. C.*, Johns Hopkins Univ. *Studies*, XIII, 62.

²⁹ *Pa. Archives*, 2nd Series, XVIII, 3-123, contains minutes of the Susquehanna Company.

³⁰ *Pa. Archives*, 2nd Series, XVIII, 47, 71, 101, 59. Charles Miner, *Hist. of Wyoming in a Series of Letters*, 145.

ritory divided for the most part into square townships as perfect and regular as a checkerboard pattern, except that these were not run out with east and west, and north and south lines, but were placed at a decided angle.³¹ Simply the main outlines were surveyed on the ground; only as settlement advanced into each township were all the bounds surveyed.³²

So far we have been considering the township method in actual practice. It appeared also in many projects that were never realized. The first notable instance is found in the "agrarian laws" of the Carolina proprietors, of 1672, already referred to.³³ The arrangement there proposed³⁴ was simply this: squares of 12,000 acres each were to be set out on both sides of the river by lines running directly east and west and north and south. Forty squares were to constitute a county, and such squares were to be combined as would make the whole county as compact as possible.³⁵ In time, "when the county backwards will admitt it," other squares were to be laid out adjoining the first ones in a direct line. In the beginning twelve counties were to be set out, and no great proprietor could take up any more land outside of them till new counties had been set out and divided into signiories, baronies, and colonies as before. Within the first counties laid out, no second signiory was to be chosen till the first one had one hundred inhabitants; and likewise with the other divisions. Any square containing an Indian town was to be left, with the square adjoining, to the Indians' use. Any person entitled to a square of 12,000 acres, could choose from among those laid out any unappropriated one he wished.

Sir Robert Mountgomery's scheme of 1717 for his proposed Azilia "in the most delightful Country of the Universe" was briefly this: to begin settlement on a square of land, then at convenience, to set out the country into square districts of twenty miles each way, each containing 256,000 acres; these districts to be subdivided in an elaborate manner into squares of

³¹ See map in Emily Blackman, *Hist. of Susquehanna Co., Pa.*, oppos. p. 10.

³² *Pa. Archives* 2nd Series, XVIII, 71.

³³ See previous chapter, page 20.

³⁴ W. J. Rivers, *A Sketch of the Hist. of S. C.*, appendix, pp. 348-349, 355-359, 366-367, 399-402.

³⁵ *Ibid.*, 355-359, for the Agrarian Laws, June 21, 1672.

different sizes—one large square in the center, and four other similar squares, of woodland, in the four quarters of the plan; the remaining squares, regularly arranged, were each one mile square, containing six hundred forty acres.³⁶ Sir Robert intended to continue forming townships as the country throve; these were to be measured as near each other as rivers, hills, “and other natural impediments” would admit of.³⁷ In 1752, Archibald Kennedy, the receiver-general of New York, published a pamphlet on the “Importance of Gaining and Preserving the Friendship of the Indians,” etc. In this he outlines a scheme of union; commissioners were to be appointed from each colony, and one of their powers was that of laying out and allotting the lands on the frontiers of the colonies in townships after the New England manner, each to have sufficient territory for sixty families.³⁸ In 1755, Samuel Hazard, a Philadelphia merchant planned a new colony beyond the mountains; he also intended to lay out “the said plantation” into townships in such manner as would be most for the safety and convenience of settlers.³⁹ In 1768, twenty-one townships of 100,000 acres each were engaged to be made in Nova Scotia by people from Pennsylvania.^{39(a)}

THIRD PERIOD: 1783–1786

The plan of townships that has attracted most attention, however, is one contained in some military papers appended to the account of Col. Bouquet’s expedition against the Ohio Indians in 1764.⁴⁰ Here the object was not simple colonization but the formation of military establishments at strategic points, particularly Fort Pitt. The author of the plan was an army officer concerning whose identity there has been much discussion. It was most probably Colonel Bouquet himself.⁴¹ The scheme sketched

³⁶ Peter Force, *Tracts and Other Papers relating to American Hist.*, I, No. 1. Charles C. Jones, *Hist. of Georgia*, I, 70–74.

³⁷ Force, *Tracts etc.*, I, No. 1, p. 9.

³⁸ Richard Frothingham, *Rise of the Republic of the United States*, p. 116.

³⁹ Christopher Gist’s *Journals*, (Wm. M. Darlington,) p. 263.

^{39a} Franklin. *Writings*, (Bigelow, Federal ed., 1904) V, 417.

⁴⁰ *An Historical Account of Bouquet’s Expedition against the Ohio Indians in 1764*. By a Lover of his Country. (Dr. William Smith.) London, 1776, p. 51. See the same in *Ohio Valley Historical Series*, No. 1, pp. 119–122.

⁴¹ For discussion of this point, see chapter on the 640 acre section, pp. 43–53.

out in the papers was this: at first a square of 640 acres was to be laid out for the town. Around this was to be a lot three miles square called the "commons," containing 5,120 acres. On three sides of the town, five other three-mile squares were to be laid out, one of which was to be reserved for wood for the use of the settlement, and the other four were to be divided into twenty-five plantations of about 230 acres each, so that in the four squares there would be one plantation for each of the one hundred families composing the settlement. All these squares formed one township, nine miles by six. Another township on this same plan, it was suggested, might be laid out adjoining this first one, "and as many more as you please upon the same line, without losing any ground." The chief importance of this plan is that it suggests remarkably enough that combination of township and section which later became one of the characteristic features of the national system of surveys. Except for the early scheme of Sir Robert Mountgomery, it is the only precedent which has yet been found agreeing closely with the national plan.

To sum up these results briefly, we find that before the Revolution broke out, there had been broached in theory the ideas of territorial division into rectangular townships of varying size, of boundary lines running to the cardinal points of the compass, and of subdivisions of such townships into lots one mile square or six hundred and forty acres. In actual practice there had been laid out tiers and blocks of rectangular townships, five and six miles square, on large areas of wild land in Maine, the present Vermont, and on the Pennsylvania frontier claimed by the Connecticut company. The royal governor of New York had caused its adoption on a large stretch of territory. In all the other colonies, new lands continued to be taken up indiscriminately by warrant of survey; the two townships laid out by South Carolina in 1761 were an exception to this, but of no real influence.⁴² The township system had developed through three stages: first, that of single townships laid out here and there

⁴² It may be in point to note here that the "stations" or stockaded settlements made in Kentucky while the Revolution was in progress, were called "townships" by the Virginia land law of 1779, and 640 acres were granted to them for a common.

as need arose; second, a group or tier of townships laid out in advance of settlement, in order to secure and defend by occupation a certain territory; third, that of laying out a whole region in parallel and contiguous tiers of townships, as a prerequisite for opening up land to settlement.

After the Declaration of Independence, public lands became a chief concern with the new states possessing vacant territory; there was need of satisfying military bounties promised to the soldiers, obtaining revenue by land sales, and increasing settlement for the sake of general prosperity. Land legislation was passed by most of the states, particularly with reference to the military lands, but in only four of them was any regular method observed. Pennsylvania attempted to introduce some system in the survey of the "donation lands" and "depreciation lands," so called as they were set apart to fulfill the promises of military bounties and to redeem the certificates of depreciation.⁴³ The surveyor-general was directed to lay out all lands found fit for cultivation into contiguous lots of between two hundred and five hundred acres; natural boundaries were to be used as much as possible, consistently with the description and proper form of each lot. But such a small approach to an orderly system proved unpopular, and in July and December of 1784, the legislature reversed all this, and threw the lands open to settlement under the old arrangement of selling warrants of survey to be located anywhere the applicant chose.⁴⁴ In 1785, the military tract was laid out into lots according to four different descriptions, viz., of two hundred, two hundred and fifty, three hundred, and five hundred acres.⁴⁵

New York was in advance of Pennsylvania in territorial methods. The act of 1781 providing for land bounties to two frontier regiments, permitted, it is true, indiscriminate locations by warrants, but this method was put at a disadvantage by the provision that if persons entitled collectively to sixty-one rights

⁴³ For a full account of these lands, see *Pa. Archives*, 1st series, X, 53, 54, 452, 458-459. *Ibid.*, 3rd Series, III, 577-603, 761-771. *Statutes at Large of Pennsylvania*, (Harrisburg, 1906), XI, 32-36. Chapter MVII.

⁴⁴ *Pennsylvania Statutes at Large*, XI, 398-401. Chapter MCXXII, Dec. 21, 1784.

⁴⁵ *Pa. Archives*, 1st Series, X, 452.

joined in a location, the state would lay out at its own expense the selected tract into a township seven miles square; any smaller tract would have to be laid out at the grantee's expense, and was required to be as nearly in a square as the adjacent appropriated lands would admit of.⁴⁶ In 1784, the military tract and waste lands were ordered to be laid out into regular townships.⁴⁷ Those townships belonging to the soldiers were to consist of 24,000 acres in a square form or as nearly so as circumstances would permit, to be surveyed at once; all others to be six miles square, to contain no more than 23,040 acres, and were simply to be mapped, not actually run out. Actual surveys would be made as petitioners received a grant.⁴⁸ A square form for all tracts was now insisted on as a permanent principle.⁴⁹ An act of April 11, 1785, caused land to be laid out in "equilateral squares" with the new requirement that the sides should be north and south and east and west lines, or as nearly so as the appropriated lands or principal waters would admit.⁵⁰

North Carolina, also, in 1784 passed a law regarding the lands set aside for the soldiers. These were to be taken up in the usual manner by warrant and survey but every tract was to be run out to the four cardinal points of the compass either in a square or oblong, which last was to be no more than twice as long as it was broad.⁵¹ There is no evidence that this law was followed out.

Massachusetts at the same time was attending to her Maine lands. There, in the region between the Penobscot and the St. Croix, the state surveyor, Rufus Putnam, was running out townships six miles square, beginning with the sea coast, navigable rivers, and lands already located, and proceeding back towards the interior in a regular manner.⁵² He made a plan and description of the land as he went along. The act authorizing

⁴⁶ *Laws of New York*, (Greenleaf, 1798,) I, 40-43.

⁴⁷ *Ibid.*, I, 125. *Laws of New York*, (Albany, 1886,) I, 720-721. May 10, 1784.

⁴⁸ *Laws of New York*, (Albany, 1886,) I, 720. May 10, 1784.

⁴⁹ *Ibid.*, 349, 432, 543, for laws containing this requirement.

⁵⁰ *Ibid.*, II, 115. April 11, 1785.

⁵¹ *Pub. Acts of N. C.*, I, 347.

⁵² *Acts and Laws of the Commonwealth of Massachusetts*, 1784-85; chap. 45, p. 283. Nov. 5, 1784.

these surveys was passed July 9, 1784;⁵³ and it was preparatory to throwing the lands open to sale. Only the outside lines were to be run, and no allowance was to be made for bogs, meadows, et cetera. Since 1781 a committee had had charge of the eastern lands with the duty of preventing encroachments and it had proposed in 1783, the plan of laying out a number of new townships,⁵⁴ but nothing was actually accomplished till the fall of 1784, as described above.

In considering the townships discussed in this chapter as precedents of the national township system, it is necessary to notice certain important respects in which they differed from those laid out on the public domain. The national townships were uniformly square. These New England townships were not uniformly so, and the early ones were often not even rectangular in form. It has already been seen that the well known phrase "six-miles square" by no means meant necessarily a square piece of land six miles on a side but indicated the size or contents of the tract granted, with the understanding that the form should be as regular as expediency permitted; the sides were often unequal. Without this knowledge one might wonder how it happened that the universal six-mile square grant throughout New England resulted in such a variety of forms as one sees on any map showing township bounds, in Massachusetts, Rhode Island, and Connecticut. Later townships, particularly those laid out in the decade preceding the Revolution, were uniformly rectangular though not outlined with checkerboard regularity.

Another difference is in regard to the *kind* of boundary lines adopted. The public land townships were bounded invariably by parallels and meridians, regardless of the topography of the country. The New Englanders used natural bounds as well as arbitrary lines, with a decided preference for the former. Rivers, lakes, mountains, the sea-coast, were made use of wherever possible, to outline tracts on one side, or serve as a base upon which to lay out a row of townships. Rivers were the most common natural bounds; this is particularly noticeable in the case of

⁵³ *Ibid.*, chap. 103, pp. 256-257.

⁵⁴ *Acts and Laws of the Commonwealth of Mass.*, 1782-1783; chap. 169, p. 895.

the rivers in eastern Maine, and the Connecticut river where it runs along Vermont. The desire for bottom lands was the chief reason for the popularity of rivers as boundaries. The very phrase "as nearly as circumstances will permit," used in most grants designating the form to be laid out, indicates that it was expected that the character of the country would have to be taken into account in determining the outline.

Another difference to be noted concerns the *direction* of boundary lines. Even when perfectly rectangular, the old townships were ordinarily unlike the modern national ones in that their lines did not run to the cardinal points of the compass. The block of townships on Sauthier's map of New York published in 1779, lay diagonally with reference to the north and south parallel boundaries of the state. The townships along the Susquehanna river and in central New Hampshire were laid to nearly every point of the compass. The Penobscot river runs almost directly north to south, consequently the townships at right angles to it have nearly east and west lines on two sides, whereas the direction of the Connecticut river caused the township along its banks to lie northwestwardly. In fact, one might find townships tipped at any angle. But there is one case in which a group of townships was surveyed by meridians and parallels very much as in a modern western state, and that is in southern Vermont. The rectangular system with east and west and north and south lines "was (here) first put into practice."⁵⁵ Bennington has the honor of being the first standard township ever surveyed in the United States with such boundary lines.⁵⁶

A last difference is in regard to subdivisions of townships. No instance has yet been found previous to 1784 of a township being laid out into lots one mile square. The number of lots depended usually on the number of proprietors, and varied in size in the different townships. Whenever a size for lots was fixed in advance, the number of acres was almost invariably fifty or some multiple of fifty. This matter is discussed more fully in a following chapter.

⁵⁵ W. A. Truesdell, *The Rectangular System of Surveying*, in the *Journal of the Assoc. of Engineering Societies*, Nov. 1908, p. 220.

⁵⁶ *Ibid.*, p. 219.

CHAPTER III

ORIGIN OF THE 640-ACRE SECTION

Scarcely anywhere in colonial practice can a precedent for the section be found. It was customary to make subdivisions of tracts, whether they were townships, military tracts, or regions opened for individual settlement, but these lots were usually of fifty acres or some multiple of fifty, and without effective restriction as to form. New England townships were divided among the several grantees according to shares or "rights." The Connecticut townships sold in 1737 were divided into fifty-three rights; in Maine the early towns in the 18th century were generally surveyed into sixty lots of one hundred acres.¹ The year that the land ordinance was being discussed, townships in New York were being cut up into lots of two hundred and two hundred and fifty acres,² and those in Maine were being divided, as formerly, among the proprietors, after reservations for public use and quieting squatters.³ Pennsylvania was dividing her new lands into individual tracts of various sizes.⁴ There was then no suggestion of the section to be gained from contemporary practice.

OBSCURE ORIGIN

In the colonial period, only one instance has been found, outside of North Carolina, of any mention of a six hundred and forty-acre tract. A surveyor in Massachusetts Bay in 1676 re-

¹ *Conn. Col. Rec.*, VIII, 134-137.

² *Laws of the State of N. Y.*, (Thomas Greenleaf, printer, 1798) I, 125.

³ Williamson, *Hist. of Maine*, II, 514.

⁴ *Pa. Archives*, 1st series, X, 53, 54, 452, 458-459; 3rd series, III, 577-603, 761-771. *Laws of the Commonwealth of Pa.*, II, 273, 319.

turned to the general court a survey he had made of six hundred and forty acres of land for "the worshipfull William Hawthorne, Esquire." "It contains a mile square and is laid out exactly square," so the certificate said.⁵

PERSISTENCE OF SIX HUNDRED FORTY ACRE UNIT IN NORTH CAROLINA

In the land history of North Carolina there is a curious persistency of the idea of six hundred and forty-acre grants.⁶ Under the proprietors this was the standard size of grant to any one person.⁷ By law no surveyor was to survey more than six hundred and forty acres in one tract.⁸ There were exceptions, and violations of the law, but six hundred and forty acres was the largest amount with the fewest exceptions between 1693 and 1729.⁹ When North Carolina became a state and opened a land office in 1777, six hundred and forty acres were retained as the unit in giving frontier bounties and preemption claims.¹⁰ Every head of a family who took up land on the frontier received that amount; likewise privates in the army, entitled to a bounty. Chain carriers, markers, and hunters employed in laying off the military tract were each paid with the same amount of land; private men of the guard were given only half as much, or three hundred and twenty acres.

This particular quantity of land may have been adopted as a convenient standard as a result of the size of headrights that were at first granted in Albemarle county. These were eighty acres and forty acres, the maximum and minimum respectively,¹¹ and six hundred and forty acres would be a natural multiple of these. Or it may have come from the fact that six hundred forty acres is the contents of a tract one mile square. Nowhere

⁵ *Mass. Rec.*, V, 104.

⁶ *N. C. Colon. Rec.*, I, 52, 72, 73, 165-175; II, *passim*.

⁷ *Ibid.*, I, 556, 845-46; II, 457.

⁸ *Public Acts of the Gen'l Assembly of N. C.*, I, 15. 1715. (Iredell's revision, revised by F. X. Martin, 1804, is the edition always referred to.)

⁹ Paper, North Carolina, 109, quoting MSS. records of the land office.

¹⁰ *Public Acts of N. C.*, I, 204-205, 306.

¹¹ *N. C. Colon. Rec.*, I, 87.

is there any reference to this quantity as being a square mile of territory. But the idea of a square form had been traditional in North Carolina from the beginning, though rarely, if ever, had it been carried into practice. Hugh Williamson of North Carolina was a member of the committee which drew up the land ordinance of 1784. In a letter of that year he claims that he suggested the plan of public surveys to the committee, and says it was original with him. In describing the plan he emphasizes the boundary lines rather than the subdivisions.¹²

THEORETICAL PRECEDENTS

In theory, there exist two striking instances of the six hundred forty-acre idea in territorial divisions. The first occurs in Sir Robert Mountgomery's pamphlet of 1717, describing his so-called margravate of Azilia. This territory was to be laid out in counties or districts of twenty miles square, each of which contained a smaller square divided up into squares a mile on each side, or "six hundred forty acres in a Square, bating only for the highways which divide them." Space was left for a central open square and for four square woodland parks, one in each quarter of the district.¹³

The second instance is found in the military papers appended to the account of Bouquet's expedition against the Ohio Indians, which was first published in 1765.¹⁴ This plan indicated a method of forming frontier settlements which might support themselves during an Indian war, and is of sufficient importance to be given in full. The writer thus begins:

"Let us suppose a settlement to be formed for one hundred families, composed of five persons each, upon an average.

"Lay out upon a river or creek, if it can be found conveniently, a *square* of one thousand seven hundred and sixty yards, or a mile for each side.

¹² *The State Records, N. C.* (ed. Clark, 1899,) XVII, p. 82. See fuller reference, page 63.

¹³ Peter Force, *Tracts and Other Papers relating to American History*, I, No. 1. C. C. Jones, Jr., *Hist. of Georgia*, I, 72-74. Map opposite p. 72.

¹⁴ *Hist. Acct. of Bouquet's Expedition ag. Ohio Indians in 1764*, in *Ohio Valley Hist. Series*, No. 1, pp. 119-123.

"That Square will contain	640 acres
Allowing for streets and public uses.....	40
To half an acre for every house	50
To one hundred lots at five and half acres.....	550

640 acres

"The four sides of the square measure 7040 yards, which gives to each house about 70 yards front to stockade, and the ground allowed for building will be 210 feet front, and about 100 feet deep.

"An acre of ground will produce at least 30 bushels of Indian corn. Therefore, two acres are sufficient to supply five persons, at the rate of twelve bushels each person. Two other acres will be a pasture for cows and sheep, another acre for hay, to be sown with red clover. The remaining half acre may be laid out for a garden.

"Round the town are the commons, of three miles square, containing exclusive of the lots above mentioned, 5120 acres." The remainder of this paragraph deals with the five other squares to be laid out around the town, and used for wood and plantations.

FRONTIER "STATIONS"

This scheme which was originated before 1765, probably the year earlier, was never carried out. But it is of great significance because of its striking resemblance to the *stations* established later on by the first pioneers in Tennessee and Kentucky. These stations were little stockaded hamlets or "townships" in which groups of families gathered "for their greater safety" in the early perilous days, and "from present necessity cultivated a piece of ground adjoining thereto in common."¹⁵ They were really defensive villages in which the settlers combined for protection while retaining individual ownership of land.¹⁶ A long fort was usually built in the shape of a parallelogram, and within this, at various intervals along the walls, the cabins

¹⁵ *Revised Code of Va.* (1819), II, 357.

¹⁶ Theodore Roosevelt, *Winning of the West*, I, 174.

were erected.¹⁷ The common holding of the Tennessee pioneer was 640 acres or a square mile but in Kentucky land was generally taken up without any regulation as to size. In 1779, Virginia passed a series of land laws, by which, among other provisions, 640 acres were granted to each station (or group of families who had settled together) for a common.¹⁸ Thus, in comparing the plan of 1764 with the actual frontier practice, we find certain characteristics common to both: a town or central settlement with outlying farms or plantations; union for defense but individual holding of land; and the size of the town or station, 640 acres on the average. In the early scheme, the square form was called for; and it was probably the military habit of square formations, combined with the need of a plot of convenient size, that led to the adoption of 640 acres as the unit, since that was the contents of a one-mile square. In the stations the square form was not observed, though the laws of North Carolina required it if possible. The forts were usually parallelograms through necessity. It is interesting to notice in this comparison that the same solution to the frontier problem was reached at different times, from two different points of view, one based on theory, the other on urgent expediency; but in each case there were similar conditions to deal with: a new country, hostile tribes, desire for settlement.

DISCUSSION OF AUTHORSHIP OF THE MILITARY PAPERS

The authorship of this plan for frontier settlements has usually been attributed to Thomas Hutchins who was assistant engineer in Bouquet's army at the time of the expedition described in the book, and drew the maps illustrating the campaign.¹⁹ It

¹⁷ See drawings and plans in the Filson Club Publications, Nos. 12 and 16: Geo. W. Ranck, *Boonesborough*, pp. 34, 78; and Reuben T. Durrett, *Bryant's Station and The Memorial Proceedings*, p. 23. Also Winsor, *Westward Movement*, p. 83.

¹⁸ *Revised Code of Va.* (1819), II, 357.

¹⁹ For discussion of this, see article by Charles Whittlesey, *Origin of the American System of Land Surveys*, in the *Journal of Assoc. of Engineering Soc.*, September, 1884, and in the same *Journal* for November, 1908, see article by W. A. Truesdell, *The Rectangular System of Surveying*, pp. 209-210. Also G. E. Howard, *Introd. to Local Constit. Hist. of U. S.*, p. 137, n.; and B. A. Hinsdale, *The Old Northwest*, p. 262.

is known that Dr. William Smith, provost of the College of Philadelphia, wrote the narrative of the expedition; this appears from the following letter from Dr. Smith to Sir William Johnson, dated Jan. 13, 1766. "Mr. Croghan set out the day before I expected he would, else I proposed sending you a copy of 'Bouquet's Expedition to Muskingum' which I drew up from some papers he favored me with, and which is reprinted in England, and has had a very favorable reception."²⁰ The narrative is plainly a compilation in which large portions of the "authentic documents" are quoted (sometimes with quotation marks, sometimes without), with just enough explanation and paraphrasing by the editor to weave the whole into a logical, continuous account. One document used was evidently a diary written during the march into Ohio, describing each day's progress. This diary it is very probable Hutchins wrote. Not only is the style of it different from the context, but it resembles closely Hutchins's style of writing; it is simple, unpolished, and journalistic in its tone. There is constant reference to minor topographical features of the country traversed, and repeated mention of distances in exact terms of miles, poles, and perches, all of which details would naturally strike the eye of a trained surveyor, and were the kind which Hutchins was constantly mentioning in his books and on his maps. The reason for considering Hutchins the author of the daily record rather than some other surveyor possibly on the expedition, is that a map entitled "a Survey of that part of the Indian Country through which Colonel Bouquet Marched in 1764," accompanies the book and was made by Hutchins.²¹ This map agrees in several respects identically with the diary, and there can be little question but that the map was sketched by the aid of these daily notes. Moreover, one has simply to compare Hutchins's known writings with this part of the "Historical Account" to be impressed with their convincing resemblance, even to the point of literal agreements in some instances.²² This is as much as

²⁰ Ohio Valley Hist. Series, No. 1: *Hist. Acct. of Bouquet's Expedition against the Ohio Indians, in 1764*. Preface by Francis Parkman, XV. Mr. A. R. Spofford discovered the letter in the Force collection.

²¹ See map opposite title-page.

²² Compare Hutchins, *Topographical Descript. of Pa., Va., N. C., Md., etc.*, pp. 21 and 34, with *Historical Acct.*, etc., pp. 44 and 49. Also notice the phrases

Hutchins can be connected with the authorship of "Bouquet's Expedition."

But even if it were proved that Hutchins wrote the account, our problem as to the origin of the plan for frontier settlements would still be unsolved, as this particular plan occurs not in the narrative of the expedition but in a collection of *appended* papers which clearly are by a different author from the one connected with the preceding narrative. Investigation leads to the conclusion that Colonel Henry Bouquet was the author of this much-discussed plan. Dr. Smith wrote that he obtained the papers from an officer of great abilities and long experience in the wars with the Indians,²³ and we know from his letter to Sir William Johnson that this officer was Colonel Bouquet.²⁴ But the mere fact that it was Bouquet who gave Dr. Smith the papers would not of itself prove anything as to their authorship. Dr. Smith, however, explicitly says in a footnote²⁵ that the military papers *were composed* by the officer who communicated them to him. These are his words: "Another reason for being so particular in this account, is that the military papers annexed to this work, and the plan for carrying on any future war with the Indians, were composed upon the experience of this engagement (Bushy Run) by an officer long employed in the service he describes. His own improvement was his principal motive in the composition of them; but being told that they might convey many useful hints to others and be of much service if laid before the public he was pleased, upon my request, freely to communicate them to me for that purpose."

Other evidence supports this statement as to authorship. The same year as the expedition, Bouquet received a letter from General Thomas Gage, dated May 14, 1764.²⁶ In it Gage says: "My chief Design in demanding a Tract of Land for the King is in order to form a military Establishment near Fort Pitt."

with regard to soil, timber, and character of the country (hilly, level, etc.) in the *Topog. Descript.*, pp. 2, 3, 29, 30, 34, 36, and see how often the same or similar ones occur in the *Hist. Acct.*, pp. 44-52.

²³ *Hist. Acct. of Bouquet's Exped.*, Ohio Valley Hist. Series, No. 1, pp. 93-94.

²⁴ *Ibid.*, Prefatory, XV, XVI.

²⁵ *Ibid.*, 25, note.

²⁶ Mich. Pion. and Hist. Soc. Colls., XIX, 257-258.

He then gave other details of his plan, after which he continued thus,—“As you have a perfect knowledge of the country round Fort Pitt I wish when you have leizure to think of such a Project that you would sketch out the Spots proper to begin upon and how to proceed till the whole Tract should be settled, in different Townships taking in the waters upon the right and left as much as possible, and always have in view Security and Defense. Proper Conditions should likewise be thought of Mustering, and Days of Exercise obligation to appear in Arms, Quantity of Ammunition each to have at all times—Obligation to cultivate the Ground in Limited Times, supply the Forts at Market Rates, so many Cattle, Naggs, etc. in such a time after the Grant given. * * *. A great many undigested thoughts have come into my head on this Subject and I give them to you as they occur. But you will give an alarm if you mention of such a project therefore don't talk of it.” This last direction was probably the reason for so carefully concealing the authorship of the papers. There is every reason to think Bouquet drew up the military papers in answer to this request, as their contents closely correspond to Gage's suggestions. They treat of the establishment of light troops for the service of the woods with respect to clothing, arms, and exercises; of methods of forming frontier settlements which should be composed of trained soldiers; of preparations for an expedition through the woods against the savages, in which plans for encampment, line of march, defiles, and a general attack are carefully elaborated; and of the construction of forts.²⁷ In one place the writer definitely says the paper was prepared for a superior officer, in these words: “I shall only venture a few notions suggested by experience upon this subject, chiefly with a view to recommend it to the consideration of persons capable of proposing a proper method of forming such an establishment.”²⁸

Comparison of Bouquet's letters with the papers also reveals strong evidence of a common author. A letter to Gage, written in Philadelphia, June 7th, 1764, less than a month after the

²⁷ *Hist. Acct. of Bouquet's Exped.*, pp. 111-135.

²⁸ *Ibid.*, p. 111.

general's letter concerning military establishments, said that the authorities of the province were going to furnish him with nine hundred and fifty men including a troop of fifty light-horse. He went on to say: "They have at my recommendation agreed to send to Great Britain for 50 couples of bloodhounds to be employed with the Rangers on Horseback against Indian scalp-ing parties which will, I hope, deter more effectually the Savages from that sort of war than our Troops can possibly do."²⁹ This same device is recommended in the paper concerning the establishment of troops for frontier service. "Every light horse-man ought to be provided with a Bloodhound which would be useful to find out the enemies' ambushes, and to follow their tracks; they would seize the naked savages, or at least give time to the horsemen to come up with them."³⁰ His letter to Sir Jeffrey Amherst, dated Aug. 6, 1763, contains these words, "Tied to our Convoy, we would not lose sight of it without exposing it and our Wounded to fall prey to the Savages, who pressed upon us, on every side, et cetera."³¹ An almost identical statement occurs in the military article treating of warfare with the Indians. The writer speaks of the unavoidable encumbrance of the provisions and baggage as keeping the troops "tied to a convoy which they cannot lose sight of without exposing it to become a prey to a vigilant enemy continually hovering about," et cetera.³²

It appears probable that Bouquet was considering these matters while in Philadelphia, for Franklin wrote to him in the summer of 1764 as follows: "I recollect that I once in conversation promised you some papers I had by me containing hints for conducting an Indian war. I have since found them and on looking them over am of opinion you will meet with nothing new in them that is of any importance; however, to keep my promise, I now send them."³³ This letter might raise the question if Franklin were not, after all, the originator of the scheme of frontier settlements. But the scheme occurs in

²⁹ Mich. Pioneer and Hist. Soc. Coll., XIX, 262.

³⁰ Hist. Acct. of Bouquet's Exped., p. 117.

³¹ Mich. Pion. and Hist. Colls., XIX, 221.

³² Hist. Acct., etc., 106.

³³ Franklin, Writings, (Bigelow, 1887-1888) X 299. August 16, 1764.

that one of the military papers which contains the clearest evidence of being Bouquet's production; and the plan is put forth as the writer's own in these words: "The plan I would propose is as follows."³⁴ Of course it cannot be said how far Bouquet was influenced by Franklin's ideas, but the probabilities are, very little.

Minor points might be mentioned. The narrative says Bouquet "ordered his March in the following manner." This manner corresponds almost to the letter with the line of march and the disposition to receive the enemy which is elaborated in the papers.³⁵ The expedition took place in October, 1764, and we have already seen that it was in the spring and summer of that year that Bouquet was thinking over military theories which the expedition gave him an opportunity to apply. The account of the Indian method of warfare in the first paper is very similar to what took place at the battle of Bushy Run in 1763, when Bouquet was the commanding officer.³⁶ Dr. Smith's note says the papers were written upon the experience of this engagement. It would naturally be the officer in chief who would make plans for a future war with the Indians, or who would compose such plans for his own improvement. Moreover, it is evident the writer is not an American for he often takes the point of view of a European or an Englishman. After referring, in one case, to the French and Prussian military tactics, he says, "We have ourselves made use of them in the two last wars in Europe. But the light troops wanted in America must be trained on different principles."³⁷ He refers to the "American savages" as a colonist born and bred as Hutchins was, for instance, would probably not have done. The extensive knowledge displayed in the papers of military tactics in classic times, the references to Latin treatises on the subject, the technical learning indicated in the descriptions of military evolutions, and the formal, elegant style, would have been little likely to appear in a work written by a surveyor educated and trained chiefly in American, as Hutchins was; but it is perfectly consistent to

³⁴ *Hist. Acct. of Bouquet's Exped.*, 119.

³⁵ *Ibid.*, compare pp. 41 and 128-133.

³⁶ *Ibid.*, compare pp. 18-23 and 107-108.

³⁷ *Ibid.*, pp. 106-107.

think of its coming from a man like Bouquet who had made a careful study of military art in Europe, especially of mathematics, and who was on terms of close friendship with several distinguished men of science.³⁸ The high commendation of the frontiersman as a soldier set forth in the latter, is in complete accord with Bouquet's repeated expressions to that effect. The style of his letters, when anything more than bare military details are touched upon, is remarkably similar to that of the formal papers, in its elegance and polish.

SIGNIFICANCE OF THE PLAN CONTAINED IN "BOUQUET'S EXPEDITION"

The evidence thus seems incontestable that Bouquet and not Thomas Hutchins was the author of the plan of 1764. From our point of view this fact is a mere matter of historical accuracy. The significant thing for our purpose is not so much who devised the plan as that it was devised. So much space has been given to the discussion of authorship, however, for the reason that it has been considered by many that this plan contained in embryo the scheme of national surveys adopted in 1785, and that, therefore, the one who thought it out was the true originator of our present admirable system. It is important that such an honor should be bestowed on the right person. The next chapter will show how far the author of the plan, whoever he was, can be regarded as the inventor of the American rectangular system.

The plan itself is especially important. It shows a British officer studying settlement under frontier conditions, and reaching the same conclusion in theory as pioneers a decade or so later, worked out in practice under the same conditions. It marks the 640-acre section as an American product, an outgrowth of American frontier life.

³⁸ Ibid., pp. XVII-XXIII for biographical sketch of Bouquet by C. G. F. Dumas.

CHAPTER IV

THE RECTANGULAR PRINCIPLE IN NATIONAL
LEGISLATION

So thoroughly has the subject of public lands under the Confederation been discussed, especially with reference to the Ordinance of 1787, that it will be unnecessary here to do more than to show the gradual appearance of the ideas that were finally embodied in the land ordinance of May 20, 1785. By that ordinance the present system of rectangular townships and sections was inaugurated.

VARIOUS PLANS REGARDING THE WESTERN TERRITORY

As early as 1777 Congress began to consider what to do with the "backlands," as they were called, though it did not then control them. A resolution was passed that year to lay out land beyond the boundaries of the states into separate and independent states from time to time.¹ In 1778 an attempt was made to divert the Hessians from the British service by offers of townships containing from 20,000 to 30,000 acres.² Soon after began the great struggle over the western land claims, and in the fall of 1780 Congress passed two resolutions of importance: one on September 6th urging the states to cede their claims and thus bring about harmony, and one on October 10th, stating that such ceded territory be formed into distinct republican states of certain size.³ Late the next year appeared

¹ *Secret Journals of the Acts and Proceedings of Congress* (Boston, 1821), Vol. 1, p. 330.

² *Ibid.*, I, 71.

³ *Journals of Congress*, (Folwell's Press. Philadelphia, 1880.) VI, 123, 146-147.

a faint foreshadowing of the ordinance introduced in 1784. The committee, to whom had been referred the cessions of New York, Connecticut, and Virginia, and the petitions of the various land companies, made an elaborate report on November 3rd, 1781, and in it occurred the following resolution: "Resolved, that when the United States in Congress assembled shall find it for the good of the Union to permit new settlements on unappropriated lands, they will erect a new State or States to be taken into the federal Union in such manner that no one State so erected shall exceed the quantity of one hundred thirty miles square, and that the same should be laid out into Townships of the quantity of about six miles square."⁴ This is important because so far as can be found, this is the first appearance in Congress of a plan for new states which should be subdivided into townships. The form of the proposed divisions is not mentioned, though the size is clearly stated.

This same year the township plan was broached in a pamphlet published in Philadelphia by Pelatiah Webster. In it he sketched what he considered the proper method of disposing of the western unlocated lands "so as to gain the greatest possible advantage from them."⁵ This method was to hold the ceded territory in an uncultivated state, free from squatters, till the adjoining land was settled, then to lay out gradually tiers of townships, six, eight, or ten miles square, contiguous to the settled country. Webster was a Connecticut man, who had come to Philadelphia in 1755 and become a merchant. He probably gained his ideas partly from the methods pursued by the Connecticut company in the Wyoming Valley. He had rendered them helpful services, for which they voted him in 1767 a tract of land.⁶

In the year 1782 nothing of importance was accomplished re-

⁴ *Journals of Congress*, VII, 367. The report was recommitted to a committee consisting of Boudinot, Varnum, Jenifer, Thomas Smith, Livermore. It came up again April 10, 1782, and April 15 was assigned for consideration. It appears in the *Journals*, May 1. Found in *Papers of the Cont. Congress*, Vol. 30, State Dept. Washington, D. C. See also John A. Merriam, *The Legislative Hist. of the Ordinance of 1787*, p. 5.

⁵ Pelatiah Webster, *Political Essays on the Nature and Operation of Money, Public Finances, and other Subjects*, Philadelphia, 1791. The essay was republished in this work. pp. 492-493.

⁶ *Pa. Archives*, 2nd Series, XVIII, 55. Minutes of the Susquehanna Company.

garding the public lands. But 1783 was an interesting year in our land history. The preliminary treaty of peace had been signed, and people were anxious to spread out on the frontiers; there was need of realizing a revenue from the public lands, and of satisfying promises made to the soldiers who were now in a dangerous mood. In the spring of 1783 two proposals were made regarding the western territory, one in Congress and one outside, but both relating to the army demands. On June 5, Theodoric Bland of Virginia made a motion, seconded by Alexander Hamilton, that in lieu of all the debts due the officers and soldiers there should be set apart a tract of vacant territory "laying within the boundaries of the United States; that the said territory shall be laid off in districts not exceeding two degrees of latitude and three degrees of longitude each, and each district in townships not exceeding miles square; that the lines of the said districts shall be run at the expense of the United States, by surveyors appointed by the United States in Congress assembled," etc.⁷ This differs from the resolution of Nov. 3, 1781, chiefly in containing the new idea of bounding the states or "districts" by lines of latitude and longitude. This was a distinct innovation, and of great significance for our purpose of tracing the origin of rectangular boundaries. Investigation so far has failed to discover where Bland got the idea.

In a catalogue of books and maps collected by Levi Z. Leiter is a map showing rectangular states in the west. This the editor attributes to Benjamin Franklin and David Hartley, in the year 1783. There is no evidence, however, warranting such a conclusion.⁸

The other proposal referred to originated with a group of army officers. As early as April, 1783, Timothy Pickering and some other officers drew up at Newburg a plan for "A New State westward of the Ohio."⁹ Pickering drew up some propositions respecting it and these were given to General Hunting-

⁷ George Bancroft, *History of the Formation of the Constitution of the U. S.*, I, 312-314. Appendix.

⁸ *Catalogue of the Books Manuscripts and Maps relating principally to America collected by the late Levi Zeigler Leiter*. Ed. by H. A. Morrison. Washington, 1907. p. 345.

⁹ Octavius Pickering, *Life of Timothy Pickering*, I, 457.

ton and General Rufus Putnam to consider and amend.¹⁰ The idea was "to form a community on the frontier capable of defending itself against the Indians, and to give Congress the opportunity of fulfilling its promise of bounties [to the army.]" Putnam drew up a petition to be presented to Congress in which he described a tract of country which he considered "sutable to form a distinct government (or Colloney of the United States) in time to be admitted *one* of the *Confederated States of America*." ¹¹ Pickering, in his series of propositions, made no mention of practical details for laying out this new state.¹² But Putnam, in a letter to Washington, dated June 16, 1783, gave a full explanation of the scheme.¹³ He wrote, "The whole tract is supposed to contain about 17,418,240 acres and will admit of 756 Townships of six miles square—allowing to each Township 3040 for the Minestry, schools, Wast lands, Rivers, ponds and Highways then each Township will contain of settlers lands 20,000 acres and the whole 15,120,000 acres * * *". Near the end he said, "* * * for these and many other obvious reasons the petitioners hope no other grants will be made but by Townships of six mile squair or six by twelve or six by eighteen; to be subdivided by the proprietors: to six mile squair that being the standard on which they wish all calculations may be made."

Thus, before the famous legislation of 1784 dealing with western territory had been entered upon, there had appeared in Congress or outside, on different occasions, the main ideas of new states, bounded by lines of latitude and longitude, and laid out in townships about six miles square.

ESTABLISHMENT OF THE RECTANGULAR SYSTEM

In the summer of 1783 while Congress was at Princeton, the subject of these new states and their mode of government was "largely debated."¹⁴ In the early months of 1784, a committee,

¹⁰ Ibid.

¹¹ *Memoirs of Rufus Putnam*, Rowena Buell, ed., 215-216.

¹² Pickering, *Pickering*, I, 546-549.

¹³ *Memoirs of Rufus Putnam*, 216-223.

¹⁴ *Rhode Island in the Cont. Congress* (W. R. Staples), 479.

of which Jefferson was chairman, was engaged on a plan for the temporary government of the western territory.¹⁵ Jefferson was also chairman at the same time of a committee appointed to prepare "an Ordinance for ascertaining the mode of locating and disposing of Lands in the Western territory."¹⁶ There is thus a close relation between the two ordinances. The latter, usually called the land ordinance, was read April 30, 1784. The first paragraph contained these words: "Be it ordained by the United States in Congress assembled, that the territory ceded by individual States to the United States when the same shall have been purchased of the Indian inhabitants and laid off into States, shall be disposed of in the following manner. It shall be divided into Hundreds of ten geographical miles square, each mile containing 6086 feet and four tenths of a foot, by lines to be run and marked due North and South, and others crossing these at right angles, the first of which lines, each way, shall be at ten miles distance from one of the corners, of the state within which they shall be." Then followed a sentence telling what should be done in case any one of the corners of the state had not been included in the Indian purchase, after which the paragraph concludes thus: "These Hundreds shall be subdivided into lots of one mile square each, or 850 acres and four tenths of an acre by marked lines running in like manner due North and South and others crossing these at right angles."¹⁷ The rest of the ordinance concerns the administrative side of the plan. On May 7, it was assigned for consideration; May 28 it was entered on the journals and consideration postponed. It appeared again on April 26, 1785, and was much discussed and amended, being finally passed on May 20.¹⁸ This law established the system as we know it today, of six-mile square townships bounded by lines running due north and south,

¹⁵ Members of this committee were—Jefferson, Chase of Md., Howell of R. I. There is no record of the appointment of this committee but it must have been before Feb. 20, 1784, judging from a letter of Jefferson, *Writings*, III, 396-406, and of Howell's, *R. I. in the Cont. Cong.*, 479. See footnote in Jefferson, *Writings*, III, 408.

¹⁶ The committee was made up of Jefferson, Williamson of N. C., Howell of R. I., Gerry of Mass., and Read of S. C. The ordinance may be found in Jefferson, *Writings*, III, 475-483.

¹⁷ Jefferson, *Writings*, III, 476.

¹⁸ *Journals of Congress*, X, 98-99, 118-123.

and others crossing these at right angles; with subdivisions into sections one mile square, containing six hundred and forty acres, bounded in the same manner as the townships. At one time during the debate provision for a seven-mile township and smaller subdivisions into half sections of three hundred twenty acres was reported but failed.¹⁹ This contest over the size of tracts, in which the North strongly favored large townships and the South small individual lots, belongs to the discussion of land sales in a following chapter. The records show no attempt to change the method of boundary lines at this time. By this law "a uniform system of mathematical survey was applied to an extensive territory." Hitherto the limits of grants and sales had been ascertained, as a rule, by sensible objects such as trees, streams, rocks, hills, and by reference to adjacent portions of territory previously surveyed. This resulted in endless litigation. According to the new arrangement "the entire public domain [was to be] scientifically surveyed before [being] offered for sale;" it was to be laid off into ranges, townships, and sections "with unerring accuracy, resting on the foundation of base and meridian lines." Maps and plans were made in which every quarter-section was laid down with mathematical precision. "The superficies of half a continent is thus transferred in miniature to the bureaus at Washington."²⁰

Without going into the matter at this point of the discussion that took place in 1785 over the ordinance, it may be briefly stated that the chief changes from the ordinance reported in 1784, were: first, in regard to terms used, "township" being substituted for "hundred," and "section" for "lot one mile square;" second, in regard to size, the unit being made six miles square instead of ten miles square; and third, in regard to the kind of mile used, the geographical mile being replaced by the statute mile. The change with reference to selling the lands will be discussed elsewhere. It is clear that these changes, though important, were not fundamental. They left unaltered the essential ideas of square units bounded by parallels and

¹⁹ *Ibid.*, 99. April 26, 1785.

²⁰ *Annals of the Dudley Observatory*, Albany, 1866; an address by Edward Everett, pp. XXXVIII-XXXIX. Article, *The Public Lands*, by same author in the *American Almanac* for 1832, p. 145.

meridians, and subdivided into one-mile square lots bounded in a similar way. It was thus the report of Jefferson's committee, made on April 30, 1784, that first definitely set forth the rectangular system of surveys as it exists today.

THE QUESTION AS TO THE ORIGIN OF THE SYSTEM

We are now confronted with the question of the origin of this admirable scheme.²¹ The credit of it has been variously assigned to Rufus Putnam, Simeon DeWitt, and Thomas Hutchins and was claimed by Hugh Williamson. Putnam's claim cannot be supported. His plan contained nothing that had not already been advanced from three different sources. Moreover, he did not insist on a square form for townships, but simply that they should contain the equivalent of six miles square.²²

Simeon DeWitt,²³ who has also been suggested as the originator of the system, was a New York man, a graduate of Rutgers College, and geographer-in-chief of the army in 1780. In the early part of 1784 he was soliciting aid from Congress in the publication of some maps made during the war. On May 13, 1784, he received the appointment of surveyor-general of New York state. In this capacity he caused Albany and Rensselaer counties, and lands in the western part of the state to be laid out in lots one half mile square, and placed to the cardinal points of the compass.²⁴ The chief argument in DeWitt's favor is the fact that at the time the land ordinance was under discussion by the committee of Congress, he was geographer-in-chief of the army, and had come particularly to the attention of Con-

²¹ For discussion of this question elsewhere, see Donaldson, *The Public Domain*, p. 178; Hinsdale, *The Old Northwest*, p. 262; Shosuke Sato, *Hist. of the Land Question in the U. S.*, Johns Hopkins Univ. Studies, IV, 134-135, (392-393 of the series); G. E. Howard, *Introd. to the Local Constit. Hist. of the U. S.*, p. 137, n.

²² *Memoirs of Rufus Putnam*, Buehl, p. 223.

²³ For articles on DeWitt, see Appleton, *Cyclopedia of American Biography*; *Transactions of the Albany Institute*, II, 309-327, containing an article by T. Romeyn Beck; *Centennial Celebration of Rutgers College, June 21, 1870*, containing an Historical Discourse delivered by Hon. Joseph P. Bradley; and a paper by Professor Austin Scott in *The Targum*, Rutgers College, Dec. 12, 1884. The chief supporters of De Witt's claim are Judge Bradley and Professor Scott.

²⁴ Judge Bradley thought the materials for this system were derived by DeWitt from Holland, where a mode of land surveying prevailed, identical with that used by the Roman land surveyors.

gress by his petition regarding his maps. It is thought that the committee may naturally have consulted him, and that Jefferson incorporated his suggestions into the ordinance. Moreover, it is considered that the coincidence between this national plan and the one carried out later by DeWitt in New York is strong evidence that DeWitt originated the national system. Investigation fails to sustain this idea. The New York lands were not laid out by DeWitt until after the land ordinance had been drawn up, and as, at this time, DeWitt had not become surveyor-general of New York, there is no reason to think he had begun to consider schemes for laying out those lands. It is more likely that the state was influenced by the nation in this matter than the other way. There is no evidence so far that any conferences were held with DeWitt or that suggestions came from him in any manner. Jefferson did not know anything about the New York geographer until he received a letter from Washington, written March 3, 1783.²⁵ By that time the plan for the government of the western territory had been reported, and there is every probability that the land ordinance, which was under consideration at the same time as the plan of government and closely associated with it, was already formulated, if not actually written out in a finished draft. Moreover, Jefferson had chief charge of the ordinance, and it was never one of his traits to seek much for suggestions from others.

Thomas Hutchins has been most generally accepted as the author of the system.²⁶ He was a civil engineer and surveyor, well known during the years between 1760 and 1789. He made excellent maps of the new western region, and wrote books and pamphlets giving descriptions of it. He was made a prisoner by the British during the latter part of the Revolutionary war. On his release, Benjamin Franklin wrote a letter in his behalf, commending him to the good offices of Congress.²⁷ Soon he became geographer-general to General Greene's army in the South. He was one of the commissioners appointed by Pennsylvania

²⁵ Bancroft, *Hist. of Formation of the Constit.*, I, 346, 347.

²⁶ Charles Whittlesey, *Origin of the American System of Land Surveys. Journal of the Assoc. of Engineering Societies.* September, 1884. Lamb, *Biograph. Dict. of the U. S.*

²⁷ Franklin, *Writings*, VII, 35.

to run the line between that State and New York in 1784, and began the work of national surveys in Ohio by running the base line of the seven ranges. His title to fame as the originator of this method of surveys is based wholly on the plan for frontier settlements included in the account of Bouquet's expedition against the Ohio Indians, already referred to at length in the chapter on sections. It has been believed by many that Hutchins was the author of this plan, and that he was the army officer who furnished the papers to the editor, Dr. William Smith. It seems now incontestable that Bouquet was the author.^{27a} The rectangular system can therefore no longer be considered Hutchins' idea.

It is now necessary to consider the question of origin from the positive side. No great leap of the imagination was required to devise the rectangular plan of township lines, since, as we have seen, the later townships on the frontiers of New England were always rectangular in theory and generally so in practice, and their lines often ran nearly east and west, and north and south. But it was a wholly new thing to use parallels and meridians for bounding such townships uniformly over a great area regardless of the topography of the country. And the opposition to it from New England men as well as others, shows how unfamiliar the idea was in practice. With one exception, no precedent for such boundary lines for townships has been found in colonial customs. The exception is the case of that group of townships in southern Vermont. Their rectangular form is identical with that of a western township today. This was beyond doubt a mere accident, brought about by reason of convenience and not by intention or principle. The contours of the country there are generally north and south, so that it was more convenient to lay the townships in a corresponding direction. Townships run at the same time in other parts of that region were at an angle. We do find this principle of boundary lines occurring in a North Carolina law of 1777, which required that every survey should be bounded by natural boundaries or by right lines running east, west, north and south,

^{27a} For discussion of this matter in full, see the chapter on the 640-acre section.

and should be an exact square.²⁸ Hugh Williamson of North Carolina was a member of the land ordinance committee, and in a letter of July 5, 1784, announced himself as the originator of the plan adopted.²⁹ He says, "The plan for laying off and settling the Western Territory you will find on the Journals. It has not been agreed to in Congress but is put on the Journals that the public may consider of it before the next meeting. This being our sheet anchor is to be carefully managed. I think the plan proposed will prevent innumerable frauds and enable us to save millions. The general object is to oblige the Surveyors to account for the land by parallels, dots & meridians. However as I happen to have suggested the plan to the Committee it is more than probable that I may have parental prejudices in its favor. It has at least the merit of being original." Unless Williamson was deceived, this evidence would solve the identity of the proposer of the plan, so far as it can be credited to any one man. It is, however, unsupported by other proof, though his North Carolina residence is significant.

JEFFERSON'S PART IN FRAMING THE SYSTEM

There already existed a precedent from which this new principle might have been obtained, and that was in connection with the boundary lines of states. In Jefferson's original draft of a plan for the government of the western territory,³⁰ the new states were to be bounded "Northwardly and Southwardly by parallels of latitude so that each state shall comprehend from South to North two degrees of latitude, * * * and Eastwardly and Westwardly they shall be bounded, those on the Mississippi by that river on one side and the meridian of the lowest point of the rapids of Ohio on the other," et cetera. The relation between this plan and the land ordinance is now to be considered. We have seen that every definite proposition regarding the public lands, in Congress or out, up to 1784, in-

²⁸ *Public Acts of the General Assembly of N. C.*, I, 207. Revis. by François Xavier Martin. Newburn, 1804.

²⁹ *The State Records of N. C.*, (Walter Clark, ed., 1899) XVII, p. 82. Quoted in part by Professor Sioussat in *Proceedings of the Mississippi Valley Association* for 1908-9, p. 54, note.

³⁰ Jefferson, *Writings*, III, 407-410.

cluded two distinct parts: (1) of marking out new states, and (2) of dividing these states into townships. It is therefore logical and probable to consider the plan for the government of the western territory (which included the laying out of new states), and the plan for the survey and sale of lands within these states, as two parts of one integral plan, and it is most likely that Jefferson so regarded them. They were under consideration practically side by side, with Jefferson as chairman of the committee in each case. This point of chairmanship indicates Congress's ideas as to the unity of the two measures. The same principle of boundaries was adopted in both. The theory of rectangular states was never realized, but its corollary, the scheme of rectangular subdivisions, was carried into practice. The situation is like that found in an old city with regard to the streets, which run in a direction determined originally by their relation to a great enclosing wall that long ago disappeared.

This conclusion makes it necessary now to go farther back and consider the origin of the plan for rectangular states. Before doing this, it will be well to finish the discussion of the land ordinance of April 30, 1784.

Certain minor innovations that Jefferson introduced into his ordinance such as a ten-mile square unit instead of the usual one of six miles square, called a "hundred" instead of a "township," and bounded by geographical miles instead of statute miles, show clearly that he was not following precedent but an artificial scheme of his own. Jefferson must have been familiar with the fact that township grants were ordinarily six miles square, as his interest in the New England township on its civil side made him study them more or less; moreover, he could not fail to have known of the six-mile township divisions proposed by Boudinot's committee, and by Putnam in his letter to Washington which the latter sent to Congress. He had himself suggested, in a law drawn up between 1777 and 1779, that every Virginia county be divided into districts five or six miles square, for school purposes.³¹ The probable explanation of Jef-

³¹ Jefferson, *Writings*, II, 222; III, 251.

person's using a ten-mile boundary instead of the customary six mile, is that he was at the time deeply impressed with the value of the decimal system. On Jan. 30, 1784, he sketched the main ideas for an ordinance establishing a monetary system which in April, 1784, he elaborated in a paper called "Notes on the Establishment of a Money Unit and of a Coinage for the United States."³² In this he expresses views which would apply to divisions of land quite as well as divisions of money. The unit of money should be of convenient size, and its parts and multiples be in an easy proportion to each other. Farther on, he says, "The most *easy ratio* of multiplication and division, is that by ten. Every one knows the facility of Decimal Arithmetic. * * * The bulk of mankind are school-boys through life. These little perplexities are always great to them. And even mathematical heads feel the relief of an easier, substituted for a more difficult process. * * * Certainly, in all cases where we are free to choose between easy and difficult modes of operation, it is most rational to choose the easy." On these principles, Jefferson devised the gold piece of ten dollars, the unit or dollar, the division of this dollar into tenths and hundredths. At about the same time, in the measures dealing with western territory, he outlined and named ten states; these were divided up into territorial units ten miles square, which in turn were subdivided into hundredths one mile square. By making his unit ten miles on a side, he thus achieved the convenient division of it into one hundred equal parts. He devised names for these new states and the territorial unit, which for one reason and another, seemed to his doctrinaire mind to be peculiarly appropriate: *Sylvania* for the territory near the Lake of the Woods; *Michigan* for the territory lying westward of Lake Michigan; *Cher-*

³² Ibid., III, 391, 446-454. I had had this idea for a considerable length of time before I came across an article by W. A. Truesdell, *The Rectangular System of Surveying* (Journal of the Assoc. of Engin. Societies, November, 1908), in which the same idea is expressed very briefly. Mr. Truesdell says: "In the ten miles square hundred we can see the trend of Jefferson's ideas. He was committed to the decimal system. He had recently proposed the division of the entire Northwest territory into ten states of square forms, either one hundred or one hundred and fifty miles in size, and had planned and secured the adoption of our present system of coinage." p. 211.

It is interesting to note that Washington referred to the new states as "the *decies*," Bancroft, *Hist. Form. of Constit.*, I, 416.

ronesus for the peninsula formed by the great lakes; *Assenisipia* for the region through which the Assenisipi or Rock river runs; *Metropotamia* for the territory in which are found the fountains of seven large rivers; *Illinoia* for the tract through which the Illinois river flows; *Pelisipi* for the country bordering on the Pelisipi river; *Polypotamia* for the district containing many rivers large and small; and for the two states to be formed just westward of Pennsylvania, where there was no marked physical feature to suggest a name, *Saratoga* and *Washington* were chosen. The territorial unit within the state was doubtless called by the name "hundred" instead of "township" because it contained one hundred square lots; moreover, it fulfilled the requirement, so necessary also in regard to money divisions, that it should be of easy adoption by the people. "Hundred" was not an unfamiliar term, particularly in Virginia and Maryland. It is not clear why geographical miles were used instead of statute miles, unless because it would be easier to calculate by the former as there were exactly sixty such miles to a degree, but of statute miles there were sixty-nine and one-quarter to a degree. Jefferson may also have been influenced by the stipulation made in a congressional report of 1781³³ that these new western states, when marked off, should not be more than the quantity of one hundred and thirty miles square. By geographical miles, his projected states would be just one hundred twenty miles on the east and west sides, but by the other variety they would be more than one hundred thirty-eight miles on the side.

The second essentially new feature of the public land township planned by Jefferson was its division into square lots one mile on a side. As seen in a previous chapter there was no precedent for this in practice. In theory the idea had been suggested in Sir Robert Mountgomery's project of 1717, and in Bouquet's plan for frontier settlements of a date earlier than 1765. Jefferson owned the account of Bouquet's expedition against the Ohio Indians, in which the latter plan was printed, and he used some facts from the book in his *Notes on Virginia*.³⁴ He knew,

³³ *Papers of the Cont. Congress*, Vol. 30. Library of Congress. See *Journals*, VII, 367, for the repetition of the report.

³⁴ Jefferson's copy is in the Library of Congress. For the reference to it in the *Notes on Virginia* see *Writings*, III, 208-209.

doubtless, of the six hundred forty-acre stations on the Virginia frontier as he was a member of the assembly which passed the law granting such stations, and through his wide acquaintance with southern land practices he probably knew of the standard grant of six hundred forty acres in North Carolina. But however the suggestion came to Jefferson, he did not follow it exactly as his square lot contained eight hundred fifty and fourteenths acres, instead of six hundred forty, due to his use of geographical miles; evidently the main thing in Jefferson's mind was that the lot should be a square mile, and the number of acres was not essential. This is another evidence that Jefferson was moulding the land ordinance according to his own theories.

GENERAL ATTITUDE TOWARD RECTANGULAR BOUNDS

If there was a real leap of thought in originating the national land system, it was probably taken when rectangular bounds were hit upon for outlining new states on the public domain. It is true that many of the colonial grants, as described in the charters, had been bounded by parallels and by meridians, and that the intention of the British government was to lay out colonies along the Atlantic coast in tracts one hundred miles square.³⁵ Many old maps favorable to the English claims show straight lines for the northern and southern limits of most of the colonies, extending to the Mississippi in the case of the southern group.³⁶ The various claims to western territory made by several states after the Revolution began, on the basis of their colonial charters, appear as long rectangular strips in every instance except that of Virginia's claim.³⁷

But as the country opened up and new colonies to the westward were planned, the tendency was away from such arbitrary lines and toward natural bounds. The new governments beyond the Alleghanies which were projected in the two decades pre-

³⁵ See first chapter on the rectangular principle in colonial surveys, p. 9.

³⁶ *Carte des Possessions Angloises et Francoises, etc.* R. and J. Ottens, Amsterdam, 1755. *Map of the British Dominions in N.* (—), A. Peter Bell, 1772. *Crown Collection of Photographs of American maps*, (Hulbert,) IV, No. 11.

³⁷ Winsor, *Narr. and Crit. Hist. of U. S.*, VII, 530. McLaughlin, *The Confederation and the Constitution*, map opp. p. 108. Hinsdale, *The Old Northwest*, map. oppos. p. 200.

ceding the Revolution had irregular natural limits marked out for them. Hazard's scheme of 1755 was an exception in having parallel lines on the north and south.³⁸ It is possible that the Mississippi Company had such boundaries in mind when it petitioned in 1768 for a tract between thirty-eight degrees and forty-two degrees north latitude.³⁹ But on the whole, the most definitely planned schemes such as Franklin's early one, *Charlotiana*, *Vandalia*, and *Transylvania*, had irregular outlines governed by the natural features of the region.⁴⁰ A good illustration of this tendency toward natural boundaries is found in a book published in 1778 by Jonathan Carver describing his "Travels in the Interior Parts of North America."⁴¹ On a map accompanying the book he marked out eleven new colonies, north of the Ohio river, which he thought might form desirable places for settlement, "choosing such lands only for this purpose as by being contiguous to some river, might enjoy all the advantages [of soil, climate, navigation, etc.], I have before pointed out." These colonies were of various shapes and sizes.

After the colonies set up as an independent nation, the plans for new western states that began to be more and more seriously considered, showed no change in the system of boundary lines. In 1776 the settlers in the disputed region around the headwaters of the Ohio petitioned for the privilege of forming a new state which should be "the fourteenth Province of the American Confederacy, with boundaries Beginning at the Eastern Branch (bank) of the Ohio opposite the mouth of the Scioto, and running thence in a direct Line to the Owasioto Pass, thence to the top of the Allegheney Mountain," et cetera.⁴² Silas Deane's suggestion that same year contemplated no more definite outlines than that the new state should be a tract "at the mouth of the Ohio between that and the Mississippi."⁴³ Thomas Paine pro-

³⁸ George H. Alden, *New Governments West of the Alleghanies before 1780*. Wis. Univ. Bulletin, Madison, April, 1897. See maps on pp. 9, 13, 33, 53, 67.

³⁹ Franklin, *Writings*, VI, 18.

⁴⁰ Winsor, *Westward Movement*, passim. for early maps. Alden, *New Governments West of the Alleghanies*, p. 9. Franklin, *Writings*, (Bigelow) II, 476-481.

⁴¹ Jonathan Carver, *Travels through the Interior Parts of N. A. in the Years 1766, 1767, and 1768*, (ed. of 1778), pp. 531-538.

⁴² Alden, *New Govt. West of the Alleghanies*, pp. 64-68.

⁴³ Jared Sparks, *Dipl. Corresp. of the Amer. Rev.*, I, 77-80.

posed a state in 1780 that should have natural boundaries corresponding roughly to those of the earlier *Vandalia*.⁴⁴ When the matter came up in Congress, nothing was said about boundaries, the stipulation regarding so many "miles square" referring to quantity or size. But from the recommendation to a committee "to report the most eligible parts or parcels thereof for one or more convenient and independent states,"⁴⁵ it is plain that indiscriminate location on a large scale was intended, with consequent irregular outlines.

The tract requested by the army officers in 1783 was, in the words of Rufus Putnam, the "Country Bounded North on Lake Erie, East on Pynnsylvania, Southeast and South on the river Ohio, West on a line beginning at that part of the Ohio which lies 24 miles west of the mouth of the river Sioto, then running north on a meridian line till it intersects the River Miami, which falls into Lake Erie, thence down the middle of that river to the Lake * * *."⁴⁶ In the fall of this same year Washington wrote a letter to James Duane in Congress, giving his opinion regarding the terms of peace which should be made with the Indians, and in it he first dwelt on the necessity of forming a new western state.⁴⁷ He wrote, "From the best information and maps of the country it would appear that the territory from the mouth of the Great Miami River which empties into the Ohio, to its confluence with the Mad river, thence by a Line to the Miami fort and Village on the other Miami River, which empties into Lake Erie, and Thence by a Line to include the Settlement of Detroit, would, with Lake Erie to the northward, Pennsylvania to the Eastward, and the Ohio to the Southward, form a government, sufficiently extensive to fulfill all the public engagements, and to receive moreover a large population by Emigrants;" "Were it not for the purpose of comprehending the Settlement of Detroit within the Jurisdiction of the new Government, a more compact and better shaped district for a State would be, for the line to proceed from the Miami Fort and Vil-

⁴⁴ Thomas Paine, *Writings* (Conway), II, 62.

⁴⁵ *Journals of Congress*, VIII, 254.

⁴⁶ *Memoirs of Rufus Putnam*, Buell, p. 215. Pickering was a little less detailed in giving the bounds of the same state: see Pickering, *Pickering*, I, 546.

⁴⁷ Washington, *Writings* (W. C. Ford), X, 303-312. Rocky Hill, Sept. 7, 1783.

lage along the River of that name to Lake Erie; leaving in that case the settlement of Detroit, and all the Territory north of the Rivers Miami and St. Joseph's between the Lakes Erie, St. Clair, Huron, and Michigan, to form hereafter another State equally large, compact, and water-bounded."⁴⁸ Thus Washington agreed with the army officers regarding the tract desirable for a new state, and in both cases it was to be "large, compact, and water-bounded." These three words represent the prevailing opinion as to the form of the new western states, based probably on the need for protection against the hostile Indians as well as on the advantages of soil and commerce.

It is thus clear that Jefferson, in proposing parallel and meridian boundaries for the new states, was acting in opposition to the tendency of the times; he took a distinctly original step. The reasons for it can only be surmised. Donaldson suggests that Jefferson may have gained the idea of a rectangular system from the stipulation in Virginia's cession, that the new states should be not less than 100 nor more than 150 miles square. It has been seen, however, that the phrase "miles square" was not always taken literally; it did not necessarily imply a square form but referred often to size, equivalent to such a form. This was true with regard to the early townships; it is plainly indicated in Silas Dean's proposition, of making a distinct state out of "a tract equal to 200 miles square,"⁴⁹ and in the committee report of November 3, 1781, which recommends marking out new states of the quantity of 130 miles square, and townships of about the quantity of six miles square.⁵⁰ This appears to have been the general understanding of the Virginia condition (which was adopted from the congressional resolve of Oct. 10, 1780), as Howell of Rhode Island wrote in a letter, January 29, 1781, that Virginia had passed an act of cession which involved certain conditions, one of which was to allot the ceded land into governments of a moderate size.⁵¹ In regard to the guess that the character of the western country lent

⁴⁸ Washington, *Writings*, X, 310-311.

⁴⁹ Sparks, *Diplom. Corresp.*, I, 79.

⁵⁰ *Journals of Cong.*, VII, 367. Reported in the *Journals* on May 1, 1782.

⁵¹ *R. I. in the Cont. Congress*, (Staples), 327.

itself readily to latitudinal and longitudinal bounds, it might be said that such boundaries were first thought of by Jefferson in connection with states, and it has just been shown that he acted in opposition to the general opinion which was that the western country lent itself naturally to a group of water-bounded states. Moreover, Jefferson evidently was not influenced by the character of the country in 1779 and 1780 when arranging such parallel and meridian boundaries to separate Pennsylvania and Virginia. A more likely explanation may be found in Jefferson's own experience. His attention had been particularly drawn to the matter of boundary lines between the years 1779 and 1783. Soon after the Revolution began the business of determining finally the long disputed territorial limits was undertaken by several of the states, particularly New York, Pennsylvania, and Virginia. In 1778, Virginia passed an act to fix the boundary between that state and North Carolina, and in 1780 the governor reported to the assembly that the line had been run.⁵² In the meantime negotiations regarding the line between Virginia and Pennsylvania had been going on, and in the settlement of this Jefferson took an active part. The matter was first taken up in 1776,⁵³ but it was not until August 31, 1779, that the commissioners came to an agreement according to the principles laid down by the Virginia assembly.⁵⁴ It was decided to extend Mason's and Dixon's line due west five degrees of longitude, to be computed from the river Delaware, for the southern boundary of Pennsylvania, and to make the western boundary a meridian drawn from this extended southern line to the northern limit of the state. This principle of boundary lines, as has been seen, was rarely used. Jefferson was governor between 1779 and 1781, and had much to do in executing the agreement after the Virginia assembly ratified it in the spring of 1780. He wrote to the president of Congress that the novelty of the line proposed for the western boundary of Pennsylvania might well account for a hesitation to confirm it until probable infor-

⁵² Hening, *Statutes*, IX, 561-564.

⁵³ *Revised Code of Va.* (1819, chap. 16, p. 51. For diagram showing the disputed boundary and proposed lines, see Winsor, *Westward Movement*, p. 197.

⁵⁴ Hening, X, 519-537, gives much documentary material on this boundary question.

mation could be obtained of its actual location.⁵⁵ It was he who proposed the mode of determining the lines by astronomical observations;⁵⁶ Robert Andrews, one of the Virginia commissioners, wrote him in April, 1781, "No objection can be made to your mode of locating the boundary, as it is the only one which without infinite pains and trouble can be in any degree accurate."⁵⁷ A few years earlier, however, Jefferson had planned out an irregular boundary, following roads and natural divisions.⁵⁸ The line was not run between the two states till 1784. The Philadelphia commissioners were David Rittenhouse, Thomas Hutchins, John Ewing, and John Lukens. In their letter of acceptance they wrote, "An anxious desire to gratify the astronomical world in the performance of a problem which has never yet been attempted in any country by a precision and accuracy, has induced us (to accept)."⁵⁹ It was Jefferson who set this problem.

During these same years, 1780 to 1783, occurred the struggle over the western lands and territorial cessions, in which Virginia's limits were so largely involved. Jefferson had occasion to consider the question of boundaries in his *Notes on Virginia* which he was writing at this time, as the first query was, "An exact description of the limits and boundaries of the state of Virginia?" In the description given, he uses terms of latitude and longitude almost entirely, except, of course, where the Potomac, the Ohio, and the Mississippi form part of the bounds; and he gives a list of the charters and other documents by which these limits were established.⁶⁰ This research into the terms of ancient grants must have familiarized him with the use of parallels and meridians in bounding large domains; and it is quite likely that he knew of the scheme of laying out colonies in square tracts along the coast, as he owned Douglass's book, "A Summary, etc., of the British Colonies in North America," in which that scheme is mentioned.⁶¹

⁵⁵ Jefferson, *Writings*, II, 297.

⁵⁶ Jefferson, *Writings*, II, 513-514; III, 15-16.

⁵⁷ *Calendar Va. State Papers*, II, 11.

⁵⁸ Jefferson, *Writings*, II, 65-66.

⁵⁹ Samuel W. Pennypacker, *Hist. and Biog. Sketches*, p. 80.

⁶⁰ Jefferson, *Writings*, III, 87-88.

⁶¹ *Catalogue (of) president Jefferson's library* . . . (copied from the MS.,

Jefferson was also forced to consider Virginia's boundaries because of Madison's urgent requests that he should "thoroughly survey the whole subject of Virginia's title to western territory, beginning with the original charter, pursuing it through subsequent charters and other public acts of the crown, through the government of Virginia."⁶² Moreover, emphasis was laid on the matter of parallel and meridian boundary lines at this particular time because of the disputes over western territory, in which the various states, excepting Virginia, claimed a strip between such and such a parallel. Jefferson was chairman of a committee in January, 1784, to whom had been referred the petition of Zebulon Butler and other Connecticut men, in which petition the claim of Connecticut to "all the lands between Pennsylvania and the Mississippi from 41° to 42°2" northern latitude" was reiterated.⁶³ The New York cession of March 1, 1781, gave up all lands beyond a certain meridian line on the west, and the forty-fifth degree of latitude on the north.⁶⁴

The foregoing facts, particularly the settlement of the Pennsylvania limits, plus Jefferson's deep interest in astronomy, his experience of the dire confusion caused by indefinite bounds, and his theoretical cast of mind, may well account for the adoption of a new scheme of rectangular states. It is not out of character to consider Jefferson as a doctrinaire reformer, eager to sweep away old irrational methods, as he had done in Virginia legislation, and on the clean slate of the new west to mark out a plan of boundaries which should advance the cause of science and bring peace to future generations.

The first sign of his approach to such a plan occurs in the proposed constitution for Virginia which he drew up in the spring of 1783.⁶⁵ In that paper the assembly is given power to sever all or any parts of its territory west of the Ohio or "of

in his own hand-writing as arranged by himself), to be sold at auction. . . .
Washington, 1829, p. 4.

⁶² Madison, *Writings*, (Hunt), I, 170-173, 186.

⁶³ Jefferson, *Writings*, III, 382-387.

⁶⁴ N. Y. *Legisl. Papers*. (MS. in State Library), No. 596. This gives an account of the instructions to the N. Y. delegates, with a series of proposed boundaries which were to be insisted upon in order. Found in *Report of the Regents of the Univ. of N. Y. on Boundaries*, pp. 152-153. The deed drawn by the delegates given on pp. 164-165.

⁶⁵ Jefferson, *Writings*, III, 325.

the meridian of the mouth of the Great Kanhaway." It is this meridian which Jefferson urgently desired Virginia to make her western limit in the cession of her northwest claims,⁶⁶ and which appears in both reports of the ordinance for the government of western territory.⁶⁷ At the time Jefferson suggested this line in 1783, members of Congress considered the natural line of the Alleghenies or the Ohio as a reasonable western limitation for the southern states.⁶⁸ Bland's motion to bound the military state by lines of latitude and longitude was made in June of this same year.

The scheme of rectangular states was fully matured by February, 1784, for in that month Jefferson⁶⁹ and Howell⁷⁰ wrote letters in which they sketched the main outlines of the ordinance as it was reported about a week later. There were certain interesting differences between Howell's sketch and the completed report. According to Howell there were to be fourteen new states forming three tiers, of which the middle tier was the smallest and was to form a balance between the two more powerful ones. The meridian line passing from Lake Erie through the mouth of the Great Kanawha was to end at the north boundary of South Carolina to permit that state and Georgia to run westward to the other meridian as "their Atlantic falls off west." In the reported ordinance, only ten states were specifically bounded and named, however many were intended to be laid out, (ten was the number understood at the time⁷¹) and nothing was said as to ending the easterly meridian at the boundary of South Carolina. When the ordinance was reported the second time, the paragraphs naming the states were

⁶⁶ Ibid., 401, 421. In these letters to Madison and Washington, Jefferson gives seven reasons why this meridian is a desirable western boundary for Virginia.

⁶⁷ In 1782, the Spanish minister proposed to Jay a longitudinal line for our western boundary. John Jay, *Writings*, II, 389, 390.

⁶⁸ Madison, *Writings*, I, 452, 482. Also in N. Y. *Legislative Papers* (MSS. in the State Library), found in *Report of Regents of Univ. of N. Y. on Boundaries*. See also Franklin, *Writings*, II, 478, in which he suggests in 1756 the same western limits.

⁶⁹ Jefferson, *Writings*, III, 400-401.

⁷⁰ *R. I. in the Cont. Cong.*, (Staples), 479.

⁷¹ Washington, *Writings*, X, 392. Bancroft, *Hist. of Form. of the Constt.*, I, 367, 371, 389, 416. See J. A. Barrett, *Evolution of the Ord. of 1787*, pp. 18-20, for discussion of the number of states planned for.

omitted, and the account of the division by parallels and meridians was simpler and more concise.⁷² The Ohio river was substituted as a boundary line in that state where the river and the thirty-ninth parallel nearly coincided. With these provisions regarding the formation of new states, the ordinance was passed, April 23, 1784.

Nothing better proves how theoretical, how unfamiliar, the whole rectangular scheme seemed to the people of that day, than the unfavorable reception accorded it. While the land ordinance was being discussed in 1785, Timothy Pickering wrote Rufus King that the manner of dividing states (into hundreds) seemed to him impracticable because of the convergence of the meridians.⁷³ Nothing is mentioned in the meagre account of the debates regarding a change in the boundary lines. Grayson, aided by Monroe, attempted to increase the number of subdivisions, by having the townships divided into "right-angled parallelograms of the dimensions of two miles by six miles, in the direction of north and south," and the sections divided into lots of three hundred and twenty acres.⁷⁴ This motion failed, and the ordinance passed May 20, with the provision for boundary lines as Jefferson had arranged it.⁷⁵

In commenting on the act, Washington wrote Grayson, "The lands are of so versatile a nature that to the end of time, they will not, by those who are acquainted therewith, be purchased either in townships or by square miles."⁷⁶ On May 3, 1786, Nathan Dane of Massachusetts moved the following in Congress, "Resolved, that in dividing said territory into townships, due regard be had to the natural boundaries of townships in those particular cases wherein a rigid adherence to lines run east and west and north and south, as boundaries would manifestly prejudice the sales and future condition of said townships."⁷⁷ The question was lost, but it is of immense significance as coming from the section which it has been thought furnished the model of the public land township. It proves that the pe-

⁷² Jefferson, *Writings*, III, 429-432.

⁷³ Pickering, *Pickering*, I, 506.

⁷⁴ *Journals of Congress*, X, 112. May 6, 1785.

⁷⁵ *Ibid.*, 118-123, for text of the ordinance as passed.

⁷⁶ Washington, *Writings*, X, 494.

⁷⁷ *Papers of the Cont. Congress*, Vol. 30, p. 83.

culiar excellence of the national township system—its checker-board arrangement of lines—was not contributed by New England. On May 12, Rufus King made the motion, seconded by Mr. Hornblower of New Jersey, that the geographer and surveyors should not be required to run all lines by the true meridian, and certify on every plot the variation of the magnetic needle, as that would greatly delay the survey. The motion was adopted and the clause repealed.⁷⁸ In regard to this, Graywrote Madison, May 28, 1786, as follows: “* * * “Some alterations have lately been made in the land ordinance; the Surveyors are liberated from all kind of connection with the stars, and are now allowed to survey by the magnetic meridian, & are limited to the territory lying southward of the East & West line as described in said Ordinance.”⁷⁹ In the law of 1796, the method of surveying according to the true meridian was again adopted.⁸⁰

The plan of rectangular states was summarily disposed of. The frontiersmen west of the Alleghanies had utterly disregarded it as appears from a memorial they sent to Congress in January, 1785, asking that a separate government be established for them, with its bounds on the Kanawha and Tennessee rivers.⁸¹ Pickering was very doubtful about the proposed divisions, though he was not in favor of natural boundaries as he thought it would “make some of the States too large, and in many of them throw the extremes at such unequal distances from the centres of the governments as must prove extremely inconvenient.”⁸² In 1786, Congress repealed that part of the ordinance of April 23, 1784, which contained the provisions for marking out ten new states by parallels and meridians.⁸³ Opposition to them was chiefly based on the business reason that it would be more difficult to sell many states than a few; that to throw such a great quantity of land on the market at once would lower the price and defeat the object of the sale. Washington wrote, “Unless in the scale of politics more than one

⁷⁸ *Journals of Congress*, XI, 56.

⁷⁹ *Papers of Madison*, Library of Congress, Vol. 14, p. 19.

⁸⁰ *Pub. Statutes, U. S. A.*, I, 464.

⁸¹ Winsor, *Westward Movement*, p. 260-61; Jefferson, *Writings*, IV, 93-94.

⁸² Pickering, *Pickering*, I, 508.

⁸³ *Papers of the Continental Congress*, Vol. 30, p. 75.

new state is found necessary at this time, the unit, I believe, would be found more pregnant with advantage than the *decies*; the latter, if I mistake not, will be more advanceive of individual interest than the public welfare.’⁸⁴

Moreover, the method proposed of bounding the new states was unpopular, and for the same reasons, unquestionably, as were stated in a report recommending Virginia to revise her act of cession. That act had stipulated that the western territory should be divided up into states containing “not less than 100 nor more than 150 miles square.”⁸⁵ On July 7, 1786, Congress agreed to a report⁸⁶ declaring that “from the knowledge already obtained of the tract of country lying north-west of the river Ohio,” the formation of such states would “be productive of many and great inconveniences. That by such a division of the country, some of the new states will be deprived of the advantages of navigation, some will be improperly intersected by lakes, rivers and mountains, and some will contain too great a proportion of barren unimprovable land, and of consequence will not for many years, if ever, have a sufficient number of inhabitants to form a respectable government and entitle them to a seat and voice in the federal council: And, whereas, in fixing the limits and dimensions of the new states, due attention ought to be paid to natural boundaries, and a variety of circumstances which will be pointed out by a more perfect knowledge of the country, so as to provide for the future growth and prosperity of each state, as well as for the accommodation and security of the first adventurers.” By this same report it was resolved to make such a division of the Northwest “into distinct republican states, not more than five nor less than three, as the situation of that country and future circumstances may require.”⁸⁷ There is little doubt that in making this report, Congress was much influenced by the unfavorable opinion of the western country that Monroe expressed after his return from a trip there in 1785. He wrote Jefferson, “A great part of the territory is miserably poor, especially that near lakes Michigan and Erie and that upon the Mississippi and

⁸⁴ Bancroft, *Hist. Form. of Const.*, I, 416. Letter to Lee, March 15, 1785.

⁸⁵ *Journals of Congress*, VIII, 258.

⁸⁶ *Ibid.*, XI, 100.

⁸⁷ *Ibid.*

Illinois consists of extensive plains which have not had from appearances and will not have a single bush on them, for ages. The districts, therefore, within which these fall will perhaps never contain a sufficient number of inhabitants to entitle them to membership in the confederacy," et cetera.⁸⁸ Jefferson regarded the change to a few large states as a great mistake, from the point of view of the happiness of the people and their power to exist as a regular society. He discussed this at length in a letter to Monroe from Paris, a few months after Monroe's letter to him above referred to.⁸⁹ Boundaries for these new states according to rivers and lakes similar to the ones proposed by Washington and Putnam in 1783, were suggested by Grayson⁹⁰ but his motion was lost at the time. But when a year later, the great ordinance of 1787 was passed, the boundaries of three new states were described, practically the same as Grayson had proposed, in these words:⁹¹ "The western state in the said territory, shall be bounded by the Mississippi, the Ohio and Wabash rivers; a direct line drawn from the Wabash and Post Vincent's due north to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincent's to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great-Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however,that.....Congress.....shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan."⁹² Thus Jefferson's theoretical scheme of rectangular states was cast aside, and the Northwest fell promptly back into that group of naturally-bounded states which were slowly shaping themselves when

⁸⁸ Monroe, *Writings*, (Hamilton), I, 117-118. Jan. 19, 1786.

⁸⁹ Jefferson, *Writings*, (Ford), IV, 246-247. July 9, 1786.

⁹⁰ *Journals of Congress*, XI, 97.

⁹¹ *Ibid.*, XII, 62.

⁹² For concise description of the present boundaries, see Gannett, *Boundaries of the U. S.* (Washington, 1885), and Donaldson, *Public Domain*, p. 160.

Jefferson took the matter in hand and tried to divert the course of development along scientific lines.

The method of bounding townships barely escaped a similar fate. We have already noticed the attack upon it by Nathan Dane. In 1790 Alexander Hamilton made his report on public lands, in which he laid down a new plan utterly disregarding that of May 20, 1785.⁹³ Tracts of not less than five hundred acres, were to be reserved for satisfying subscribers to the public debt; from time to time convenient tracts were to be set apart for actual settlers in quantities not exceeding one hundred acres to one person. Other tracts were to be set off now and then in townships ten miles square, except where they should adjoin a prior grant or a similar tract so set apart, in which cases there was to be as little departure from the designated form of location as possible. Any quantities might be sold by special contract comprehended either within natural boundaries or lines or both. Nothing was done, however, to carry out these ideas.

The critical struggle came in 1796, when the subject of the sale of public lands was again brought up in Congress.⁹⁴ The matter of boundary lines was threshed over again thoroughly. The mode of surveying by parallel lines at six miles from each other was strongly objected to because it threw out the natural boundaries. Arguments in favor of restoring natural bounds were frequent. It is worthy of notice that these speakers were all from outside of New England, chiefly from Virginia and Pennsylvania. Findley of Pennsylvania said it was the duty of the legislature to improve the advantages of nature, and desired a plan that should properly divide the bottoms, water, etc., into the different divisions;⁹⁵ he thought surveys should not destroy natural boundaries, and therefore the fewer parallel lines, the less destruction of this kind.⁹⁶ A Maryland member would have all surveys confined to four lines except in cases of water.⁹⁷ Ma-

⁹³ Alexander Hamilton, *Works* (Ed. H. C. Lodge), VII, 49-50.

⁹⁴ *Annals of Congress*, 4th Cong., 1st sess., pp. 329, 330, 336, 339, 342, 347, February, 1796.

⁹⁵ *Ibid.*, 329.

⁹⁶ *Ibid.*, 339.

⁹⁷ *Ibid.*, 342.

clay of Pennsylvania believed it was easy to describe lots sufficiently correct [sic] by rivers and creeks, and such natural lines, and thought the method of binding down surveys to the cardinal points might prove the most inconvenient of any.⁹⁸ Nicholas of Virginia declared that if the country was not square, the lines could not be run in squares.⁹⁹ Gallatin suggested that surveyors put lands into lots as was most convenient, to be bounded by lines due north and south, east and west, or by natural boundaries.¹⁰⁰ The New York congressmen urged a plan similar to that of Hamilton's—of laying out the territory into large tracts and small ones according as was expedient.¹⁰¹ Different opinions were expressed according as the members felt from the usages of the states to which they belonged.¹⁰² It was finally decided to make no real change in the system of boundaries, but a slight concession was granted. The law provided that townships six miles square were to be laid out as in 1785 with these exceptions: "When the line of the late Indian purchase, or of tracts of land heretofore surveyed or patented or course of navigable rivers may render it impracticable, and then this rule shall be departed from no further than such particular circumstances may require."¹⁰³ The exception with reference to the Indian purchase was not new, but the other two cases were. It does not appear that these operated to prevent the usual rectangular lines from being followed.

Thus, not till the spring of 1796, was the rectangular system accepted as a permanent part of our national land system. From that time on the line of development was in the direction of increasing the number of subdivisions. In this way the land system which had been framed for community settlement was gradually adapted to the needs of individual settlers. The first step in this direction was taken in the law of 1800 by which lots of three hundred and twenty acres, or one-half section,

⁹⁸ Ibid., 347.

⁹⁹ Ibid., 336.

¹⁰⁰ Ibid., 336.

¹⁰¹ *Annals of Congress*, 4th Congress, 1st sess., Feb. 16 and 17, 1796, pp. 329-347.

¹⁰² Ibid., 414. March 3, 1796.

¹⁰³ *Public Statutes at Large of the U. S.*, I, 464; also found in *U. S. Land Laws, Local and Temporary*, I, 6, No. 11.

could be laid off for purchasers; but this privilege was granted only beyond the Muskingum river; eastward of that, the smallest subdivision purchasable was still a section.¹⁰⁴

CONCLUSION

From these first chapters, it is clear that the American method of surveys was not the invention of one man. The various elements of the method had been developing through the colonial era and were ready to the hand of the legislator. The fundamental idea of rectangular outlines was held in theory from the beginning, and obtained to a large extent in practice. The method of laying out new territory in townships was the one adopted in nearly every case where there was definite planning in advance for settlement, without too eager desire for revenue. A later development was the idea of the one square mile or 640 acre unit which appeared first in theory, but afterward was realized in connection with the "stations" or little settlements for defense on the Southern frontier. It was the gradual convergence of these three lines of development that formed the system of surveys as we have it today.

It is unhistorical to credit any one section with furnishing the precedents of such a complex system. It is nearer the truth to regard these precedents as furnished from a variety of sources. New England contributed a valuable part in the actual surveys of wild lands into townships more or less rectangular, and in the suggestions of New England men like Pelatiah Webster, Rufus Putnam, and Pickering. But other contributions must not be overlooked. The middle states had an influence through the townships blocked out in New York, and William Penn's comprehensive plan of settlement "by way of townships" which was never forgotten however little it was followed out. The southern states contributed their part in the schemes of the Carolina proprietors and of Sir Robert Mountgomery, both of which were in such striking manner prototypes of the modern system; in the fruitless township plan for Georgia, and in the

¹⁰⁴ *Public Statutes at Large of the U. S.*, II, 73; also found in *U. S. Land Laws, Local and Temporary*, I, 17, No. 21.

North Carolina laws regarding square tracts, six hundred forty-acre grants, and boundaries by east, west, north, and south lines. The British government furnished a share in its scheme for townships in South Carolina, its instructions of 1774 for regularity in land surveys, and in the theories outlined by officials like Archibald Kennedy and Henry Bouquet. The frontier through its "stations," contributed the idea of the six hundred forty-acre tract as a simple and convenient unit in dividing up territory. And after the Revolution, most of the states owning waste lands furnished ample suggestions by their methods of dealing with the military tracts.

With all this wealth of precedent and usage for guidance, the matter of disposing of the great public domain came into the hands of a committee of which Jefferson was the master mind and which included Williamson, who was familiar with North Carolina's laws, and who claimed to have proposed the rectangular system for the committee's consideration. At this time Jefferson was comparatively fresh from his revision of Virginia laws on a broad and enlightened basis, and from planning the bounds between Pennsylvania and Virginia according to a new scientific scheme by means of astronomical observations, and was devising a theoretical plan for an easy, rational monetary system. There can be little doubt that he saw in this land question another opportunity for carrying out his theories and of establishing this new country on the most enlightened principles. In a sense, what Jefferson's committee did was merely to straighten the lines of the familiar township surveys so that they would run invariably east, west, north, and south.

The system of rectangular surveys was therefore a gradual evolution under conditions peculiar to American colonial life, modified in regard to boundary lines by the reforming, doctrinaire mind of Jefferson.

CHAPTER V

THE REVENUE POLICY REGARDING LAND

To sell unappropriated lands for profit had not been a general practice in the colonies. Such lands were ordinarily donated. The idea of making them yield revenue in some manner appears to have been early considered by Sir Edwin Sandys who proposed raising funds from the company's lands by placing tenants on them.¹

PRACTICE OF THE GREAT PROPRIETORS

It was, however, the great proprietors who regarded themselves as "landlords of private estates," who introduced the practice of land sales in order to add to their income. Lands in the Northern Neck of Virginia were thus disposed of as early as 1661. The Carolina proprietors pursued this policy after the first few years, particularly in North Carolina.² Penn set a price on his lands from the beginning. Immediately after this action in Pennsylvania, the Maryland proprietor adopted the practice by proclamations issued in 1682 and 1683.³ In 1701, Virginia allowed persons who had no claim to head-rights to take up tracts at five shillings per fifty acres.⁴ The general characteristics of these sales were that they were usually private, being made at the land offices, that the amounts sold were large or small according to the will of the purchasers, and that the prices were fixed.⁵ An exception to the method of private sale

¹ E. D. Neill, *Virginia Company of London*, 157.

² *N. C. Records*, II, 528.

³ Kilty, *Landholder's Assistant*, 121, 124.

⁴ Hening, *Va. Statutes*, III, 304-305.

⁵ In North Carolina this fixed price was really a minimum price. By instructions of 1694, no lands could be sold less than ten pounds per thousand acres,

occurred in Maryland. There escheated land was sometimes sold at auction to the highest bidder, and in 1766, the proprietor directed that his manors and reserved lands should be sold in that manner, provided the bid was equal to a stated price.

SALES IN NEW ENGLAND BEFORE THE REVOLUTION

During the eighteenth century, the New England governments began to make land sales. Connecticut thus disposed of the last unlocated tracts in the western part of the colony by an act of 1737. In 1762 Massachusetts sold a group of townships in the Berkshires.⁶ In both cases these lands were sold at "public vendue" to the highest bidder; but there was a marked difference between the two in this respect, that Connecticut sold her townships in lots, fifty to a township, but Massachusetts sold her townships in wholes. The Connecticut assembly fixed a price at which the lots should be put up, generally fifty or sixty pounds.

CHANGE IN BRITISH POLICY IN 1774

Shortly before the Revolution the British government awakened to the idea that it might obtain revenue, in addition to quitrents, by selling its colonial lands just as the proprietors of Pennsylvania and Maryland were doing.⁷ The Lords of Trade broached the matter in 1771, and in 1772 came out with the definite proposition that the unappropriated lands in the region of the New Hampshire grants should be sold at five pounds sterling per one hundred acres.⁸ This plan was soon applied to all the crown lands by the radically new instructions of 1774.⁹ Lands opened up for settlement were to be sold at

but as high a price as seemed fit could be demanded. The minimum price in 1702 differed for lands near the mountains and those near settlements. *N. C. Rec.*, I, 556.

⁶ *Conn. Col. Rec.*, VIII, 134-137. As early as 1674 Connecticut had appointed a committee to dispose of certain public tracts at the best price, but the manner was not indicated. *Conn. Col. Rec.*, II, 231. J. G. Holland, *Hist. of W. Mass.*, I, 197.

⁷ *Doc. Rel. to Col. Hist. of N. Y.*, VIII, 275.

⁸ *Ibid.*, VIII, 275, 334.

⁹ *Ibid.*, 410, et seq.

auction, in lots varying in size from one hundred to one thousand acres; the price at which the lots should be put up for sale was stated, and also a minimum price of six pence per acre below which no sale should be made. Previous notice was to be given in the particular province concerned and also in neighboring ones. This method of sale combined the New England feature of selling at auction, with the custom of the middle and Southern colonies of disposing of land in large or small lots, and of fixing a single price, corresponding in the main to a minimum price. Virginia protested strongly against these new instructions as "an innovation on the established usage of granting lands in this colony."¹⁰ The real innovation was that lands which heretofore had been sold at a merely nominal price were now to be charged for at a substantial rate. That same year Lord Dunmore had opened several land offices in the western part of Virginia and was selling land warrants at the trifling sum of ten shillings per hundred acres, and even that was not demanded.¹¹ The royal orders entirely reversed such a procedure. They were never carried into execution, however, as the Revolution broke out the next year. But in 1779 New York bettered the instruction by selling at auction the confiscated estates, in such parcels as the commissioners thought proper.¹²

ATTITUDE OF THE NEW AMERICAN STATES

When independence was finally achieved, the new states possessing vacant territory at once saw in it a means of accomplishing various purposes, among which promoting population and increasing revenue were the ones chiefly emphasized.¹³ To this end, most of the colonies, sooner or later, began to sell their wild lands. South of Mason and Dixon's line, these sales were conducted as formerly,—in private, at a fixed price, and in vary-

¹⁰ *Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia*, 1775, p. 8. See Jefferson, *Writings*, I, 444, where this is referred to in *A Summary View*, etc.

¹¹ Albach, *Annals of the West*, 228.

¹² *Laws of the State of New York* (1886), I, 178.

¹³ See the preambles to the following laws: Henning, *Va. Statutes*, X, 50; *Laws of Pa.*, (1810), II, 102. April 1, 1784; *Acts and Laws of Mass.*, 1782-1783, chap. 169, p. 896. Mar. 19, 1784.

ing amounts. Sale at auction was resorted to occasionally as was done in Virginia in 1785 when certain public lands near Old Point Comfort were sold,¹⁴ and in South Carolina the same year, when commissioners were authorized to sell two lots of land to the highest bidders.¹⁵ South Carolina land forfeited because of non-payment was also to be sold at auction.

SALES OF STATE LANDS IN 1784-1785

It is in the methods of sale adopted by Pennsylvania, New York and Massachusetts that evidences of the future national practice appear. The Pennsylvania law of April 1, 1784, regarding the disposal of lands in the recent Indian purchase, provided for sale at auction in lots of not less than two hundred acres nor more than five hundred;¹⁶ but by the close of the year this plan was abandoned on the ground of its being tedious, inconvenient, and likely to deprive many of their proper shares in the land, and the old custom of private sale at the land office at the settled price of thirty pounds for one hundred acres was again taken up.¹⁷ When the depreciation lands of the state were put into the market in November, 1785, it was directed that they should be sold by the acre, not by the tract, at public auction; the minimum price was six shillings an acre. The sales took place at the Old Coffee House, but the returns were so unsatisfactory that after March, 1787, no more of the lands were thus offered.¹⁸

In New York in 1784, lands were sold either at private sale or public vendue, just as seemed best. The commissioners in one case were ordered to sell them in such parcels as they thought proper, and in another not to dispose of over five hundred acres in each parcel, unless they considered it more beneficial to the state to sell in larger amounts.¹⁹ By the spring of 1786, unappropriated lands were being sold very much ac-

¹⁴ Hening, *Statutes*, XII, 97.

¹⁵ *S. C. Statutes* (ed. Cooper), IV, 706-708.

¹⁶ *Laws of Pa.* (1810), Mar. 12, 1783, II, 62; April 1, 1784, II, 103. *Pa. Archives*, 1st Series, X, 53-54.

¹⁷ *Laws of Pa.*, Dec. 21, 1784, II, 272.

¹⁸ *Pa. Archives*, 1st Series, X, 537; 3rd Series, III, 767-768.

¹⁹ *Laws of New York* (ed. Greenleaf, 1798), I, 128; *Laws of State of N. Y.* (Albany, 1886), I, 722, 737, 744. May 12, 1784.

cording to the national plan adopted in 1785,—in square townships, of which every fourth township was sold in single lots of six hundred forty acres; sale was at auction at a minimum price.²⁰

Massachusetts, in selling her Maine lands in 1784, observed the same principles as New York, in regard to having either a private or public sale, as seemed most advantageous to the state, and in selling large or small quantities. By the law of March 19, 1784, a land office was established at Boston; Rufus Putnam was appointed state surveyor and public notice was given that lands would be offered in quantities to suit purchasers, as soon as surveys and plans could be made. In townships along a river, one half the lands would be sold at six shillings an acre, and the other half on such terms as seemed reasonable to the vendors. As to quantity, lots would be disposed of in one-half the townships in tracts of five hundred acres; lots of one hundred and fifty acres each might be bought in the other half.²¹ The general court relaxed from any stated method by 1788.²² A law passed March 26th of that year, permitted the committee on eastern lands to sell unappropriated lands in quantities and on such terms as they should judge most for the interest of the commonwealth.

The idea of selling the unlocated territory of the new nation to pay the national debt had been broached in Congress as early as 1776, but had met determined opposition.²³ Jefferson himself declared he was against selling the lands at all.²⁴ "The people who will migrate to the Westward whether they form part of the old, or of a new colony will be subject to their proportion of the Continental debt then unpaid. They ought not to be subject to more." "By selling the lands to them, you will disgust them, and cause an avulsion of them from the common union. They will settle the lands in spite of everybody." "A foreigner who brings a settler for every 100, or 200 acres of land to be granted him pays a better price than if he had put into the

²⁰ *Laws of N. Y.* (Albany, 1886), II, 334.

²¹ *Acts and Laws of Mass.*, 1782-83, chap. 169, pp. 895-897. March 19, 1784. Also *Ibid.*, 1784-1785, p. 234, 660, 645. 1786-1787, pp. 331, 367.

²² *Ibid.*, chap. 80, p. 867. March 26, 1788.

²³ Jefferson, *Writings*, II, 80.

²⁴ *Ibid.*, 79-81.

public treasury 5 dollars or 5 pounds. That settler will be worth 20 times as much every year, as on our old plan he would have paid in one payment." By 1784, however, Jefferson had accepted the plan of land sales to meet the public indebtedness, and in his land ordinance of that year, provided for private sale of land warrants by the loan officers or the national treasurer. Purchasers might buy the large tracts of ten miles square, or the small ones of one mile square, at a fixed price in the two cases.²⁵

When the matter of sales came up in Congress in 1785, the discussion centered chiefly about the size of tracts to be sold.²⁶ The men from New York and Massachusetts stood firmly for large tracts sold entire. They were used to community settlement and believed that the best way to settle the West. They were also interested in lessening the availability of national lands as their own states were at this time offering large areas for sale, and the entrance of the national government into the land market as a competitor was most unwelcome.²⁷ Massachusetts expressly stated in the preamble to one of the land laws that it was drawn up for the purpose of preventing emigration into other states and accelerating settlement of lands in the commonwealth.²⁸ The Southerners were eager for small tracts appropriate to the needs of individual settlers such as those by whom their own states had been chiefly occupied. Grayson wrote Madison on May 28, 1785:

"The Eastern people who before the revolution never had an idea of any quantity of Earth above a hundred acres, were for selling in large tracts of 30,000 acres while the Southern people who formerly could scarce bring their imaginations down so low as to comprehend the meaning of a hundred acres of ground were for selling the whole territory in lots of a mile square. In this situation we remained for eight days, with great obstinacy on both sides, untill a kind of compromise took effect."²⁹ The compromise was the reduction in size of the townships to six miles square, and the sale of sections in these townships.

²⁵ Jefferson, *Writings*, III, 477-478.

²⁶ *Journals*, X, 95, 99, 106-116.

²⁷ Bancroft, *Hist. of Form. of Constit.*, I, 351. Letter of Putnam to Washington, April 5, 1784.

²⁸ *Acts and Laws of Mass.*, 1782-1783, chap. 169, p. 896. Mar. 19, 1784.

²⁹ *Papers of Madison* (Library of Congress), Vol. 14, p. 17.

The ordinance of May 20, 1785, thus abandoned the scheme of private sales such as prevailed in the southern and middle colonies, and such as Jefferson had recommended, and substituted instead the method of public sale to the highest bidder which was common in New York, and New England, and which the British government had decided upon in 1774, and Pelatiah Webster had proposed in his pamphlet of 1783. The alternate townships of every range were to be sold by lots or sections, all the others being sold entire. No lands were to be sold below the price of one dollar an acre.³⁰ As may easily be seen, the national plan was more rigid than that in use in Massachusetts or New York, for those states disposed of lands at private sales as well as public, and permitted small parcels to be freely bought no less than large ones. The minimum price of those state lands was also lower than that on the public domain.

In 1796 the manner of selling the public lands was again largely debated in Congress, and was finally changed to the plan of private sales at land offices, according to the Pennsylvania practice.^{30a}

PRINCIPLE OF CREDIT

The principle of selling lands on credit was introduced into the national system by the act of May 18, 1796. According to this, the purchaser was to deposit one-twentieth of the amount due at once, pay a moiety of the whole sum in thirty days, and have a year's credit for the remainder. In 1800 credit was extended, insomuch that the purchaser was given four years to discharge the debt on the condition of paying one-fourth soon after the sale and one-fourth every year for the next three years. This principle of credit was not new to the country. In colonial times credit was commonly allowed in the great proprietaries of Pennsylvania, Maryland, and the Northern Neck of Virginia. In Maryland credit was frequently allowed as an inducement to settlers. When Baltimore desired to

³⁰ *Journals of Congress*, X, 120-121.

^{30a} *Annals of Congress*, 4th Congress, 1st session, p. 328, et passim. February, 1796.

settle some disputed territory "on the seaboard side on the Eastern Shore and on Delaware Bay," in 1670 and 1677, he gave permission to anyone to take up upon credit any quantity of lands there not exceeding three hundred acres, on condition of settling there one person for every fifty acres.³¹ In 1775 the governor was given power to grant lots of one hundred (100) acres on a credit of two years, to encourage settlement in the back part of the province.³² The preëmption rights which the Penns granted to squatters were really a form of credit, as they meant the permission to pay for the land whenever convenient. Credit for quitrents was not unusual. In the first years of the Carolina undertaking, the proprietors directed Sir William Berkeley to give the people that "planted" from two to five years for the convenience of their payments of quitrents if they were not willing to pay them immediately.³³

When the colonies became states, credit became far more general than formerly. Both North Carolina and Virginia provided for it in their respective land legislation of 1777 and 1779. The inhabitants of a frontier county in North Carolina had their time of payment extended because of their sufferings from the Indian wars.³⁴ Those actual settlers on the western waters under Virginian jurisdiction, who were unable to pay cash for their land, were allowed to take up four hundred acres on credit, paying for it in two years and a half from the time of survey.³⁵

Henderson sold his Transylvania lands to settlers, but postponed the payment for them till the company's title should be confirmed.

The land laws passed by Pennsylvania and New York in 1784 contained provisions for credit. In Pennsylvania it was a temporary measure. The law of April 1 gave the purchaser the privilege of paying one-half down, and the other half at the end of two years; but this was repealed on December 21 of the same year. In selling confiscated property, New York al-

³¹ Kilty, *Landholder's Assistant*, pp. 60, 119, 237, 310.

³² *Ibid.*, 266.

³³ *N. C. Rec.*, I, 51.

³⁴ *Public Acts of N. C.*, I, 16; Haywood, *Civil and Polit. Hist. of Tenn.*, 69.

³⁵ Henning, *Va. Statutes*, X, 178, 431.

lowed two thirds of the amount to be paid at the close of one year from time of sale.³⁶ In 1785 Massachusetts sold townships on one year's credit, with interest.³⁷ A law of the same time directed the sale of lands in the Berkshires, on the terms of one-fourth cash and three-fourths on six months' credit.³⁸ When the general court, in 1790, was arranging a settlement between the proprietors of the Kennebec purchase and the inhabitants it granted the people nine months in which to pay the sums due the proprietors.³⁹

THE ADMINISTRATION OF THE LAND SYSTEM

The administration of the public lands for the first twenty-five years was unsettled and unsatisfactory.⁴⁰ Not till 1812 was a definite, adequate policy adopted by the establishment of the national land office. In the land ordinance of April 30, 1784,⁴¹ Jefferson outlined a kind of administrative machinery that was taken from the Virginia system; in some cases the phraseology of the Virginia land law of 1779 was repeated verbatim. This brought about the curious situation that a system of accurately fixed, squarely outlined tracts, surveyed previous to sale, were to be disposed of by the methods usual and necessary under a system of indiscriminate, irregular location by warrants, previous to survey. There were detailed provisions regarding warrants, caveats, safeguards against hasty and surreptitious titles, and description according to natural objects, all of which were familiar wherever indiscriminate location prevailed.^{41a}

By the ordinance passed on May 20, 1785, all these arrangements were swept away, and the board of treasury (as the treasury department was then called), was given charge of ad-

³⁶ *Laws of New York* (Greenleaf, ed.), I, 132.

³⁷ *Acts and Laws of Mass.*, 1784-85, p. 645. June 21, 1785.

³⁸ *Ibid.*, 660, chap. 66. June 28, 1785.

³⁹ Butler, *Hist. of Farmington, Me.*, 50-51.

⁴⁰ For secondary accounts of this, see Donaldson, *Public Domain*, 164, 201; McMaster, *Hist. of the U. S.*, III, 105-124; Shosuke Sato, *Land Question in the U. S.*, Johns Hopkins Univ. *Studies*, IV, 121-122.

⁴¹ Jefferson, *Writings*, III, 475-482.

^{41a} See Kilty, pp. 66, 73, and Jefferson, *Writings*, III, 242, for clear accounts of this method of taking up land.

ministering the public lands.⁴² This was consistent action as the public domain was regarded at this time wholly from the point of view of revenue. An officer called the geographer (presumably from a similar officer attached to the army), was put in charge of the surveys, assisted by a surveyor from each state. The board received the plats of surveys, gave deeds, and were enabled to move about the United States and sell lands at pleasure. It made the contracts in the cases of sale to the Ohio Company, to John Cleve Symmes, and to the state of Pennsylvania. In each case the president gave the patent. The commissioners of the loan offices in the states had similar duties to the board but were subordinate to it.

A change in the method of administration was suggested in 1790 by Alexander Hamilton in his well known report that year on the public lands.⁴³ He proposed the establishment of a general land office at the seat of government with two subordinate offices in the "Northwestern" and "Southwestern" governments, to be managed by three "Commissioners of the General Land Office." The officials of the subordinate office were to have charge of all sales and the issuing of warrants. The officer in charge of surveys was to be the surveyor-general (replacing the former geographer-general), with a corps of deputy surveyors to execute in person the warrant. The treasurer of the United States was to be the receiver of moneys at the general office and the secretaries of the western governments at the subordinate offices. All patents were to be signed by the president or some one in his stead. The recommendations of this report were not acted upon immediately, and after much delay only by instalments. The law passed six years after the report, carried out the suggestions in regard to a surveyor-general and signing of patents but did not establish subordinate offices. It permitted public sales, however, to be made at Cincinnati and Pittsburgh.⁴⁴ By this act the secretary of the treasury became "the executive power or agent in the sale or

⁴² *Journals of Congress*, X, 118-123.

⁴³ Hamilton, *Works* (Lodge), VII, 47-54. In 1789, Scott of Pennsylvania had urged the idea of a land office, and the need of granting lands directly to settlers through agents. *Debates of Congress*, I, 99-115.

⁴⁴ *Pub. Statutes, U. S. A.*, I, 464.

disposition of the public domain," and "remained so until the organization of the general land office."

The act of May 10, 1800, went a long step farther and established four district land offices at Cincinnati, Chillicothe, Marietta, and Steubenville, with two new officers, the register and the receiver, in each.⁴⁵

The business of managing land affairs stands out preëminently in colonial experience.⁴⁶ But in seeking precedents for methods of administration, one must go not to New England but to those other colonies in which revenue was a primary consideration as it was with Congress after the Revolution. In those colonies where a system of headrights, concessions, quit-rents and dues of various kinds prevailed, an administrative machinery had to be created to record claims, issue warrants, convey deeds, collect rents, et cetera. It was in the proprietary colonies of Maryland⁴⁷ and Pennsylvania⁴⁸ that land offices were first established and administrative methods most elaborately developed. The national government, on coming into control of a great public domain to be disposed of for revenue, was in the position of a great landed proprietor like Penn or Lord Baltimore, and it naturally adopted the familiar methods in use in the states which they founded. It was the Pennsylvania practice that was followed. The methods of the British government in regard to land and the officials employed were also well known and influential.

The custom of having a board administer the lands was common. In Maryland, before the land office was opened in 1680, land affairs were managed by the governor, council, and secretary. After 1684 a land council of four members had full charge of territorial matters. Before 1680, this business in New Netherlands, New York, New Jersey, and the Carolinas was looked after by the director or governor, and council, without any separate land office.⁴⁹ In East Jersey the board of pro-

⁴⁵ *Ibid.*, II, 73.

⁴⁶ For citations on this subject, see Osgood, *American Col. in the 17th Cent.*, II, 42-47; Raper, *North Carolina*, 101, 124; Shepherd, *Prop. Govt. in Pa.*, Columbia Univ. Studies, VI, 26-36; Mereness, *Maryland as a Prop. Province*, 49-75.

⁴⁷ Kilty, *Land-Holder's Asst.*, 64-83.

⁴⁸ Shepherd, *Prop. Govt. of Pa.*, 26-32.

⁴⁹ Osgood, *Amer. Colon. in 17th cent.*, II, 44-45.

prietors, and in West Jersey the board of commissioners, practically constituted a land office. In Pennsylvania land had been sold from the beginning, and a land office instituted, but its affairs were in great confusion till after 1732. The Penns managed their lands through a commission or board of property till 1741, at which time they were entrusted to the governor. In 1765 a new board of property was constituted, the governor acting with it as a member.

The office of surveyor-general existed in Maryland⁵⁰ from 1641. In that year he was appointed not merely to direct surveys of land alone but to oversee "Castles, Lordships, Manors, Forests, Chases, Parks, Messuages, Tenements, *Lands*, Woods," etc. This officer signed certificates of survey till 1685, when an examiner was appointed to do it. There was a surveyor-general in all the middle and southern colonies. A clerk or register was the officer appointed in Maryland in 1680 to have charge of the new land office; he kept land records, proved claims, issued warrants and drew patents. When Virginia established her land office in 1779, the chief officer in charge was called the register, adopted, no doubt, from the custom in Maryland. A receiver or receiver-general was a well-known British official who collected revenues, and a similar officer was a member of the board of property in Pennsylvania and in New Jersey.

⁵⁰ Kilty, p. 65.

CHAPTER VI

LAND BOUNTIES

No principle in the land history of our entire country is older or of more general application than that of giving away public land. Thomas Benton exaggerated little when he declared that the thirteen British colonies were settled upon gratuitous donations or nominal sales,¹ and he might have added that this was also the policy of the Spanish and French in this country. These donations were made for various considerations, chief of which was that of actual settlement. The homestead act of 1862 was therefore only a tardy recognition by the nation of a custom common among settlers from the beginning. The national government, naturally enough, followed a course in direct variance with that pursued by the colonies because its attitude toward public lands was exactly opposite. In the early period, settlement was the end desired, and to further this, lands were freely bestowed; whereas, under the national regime, revenue was the chief object and lands were therefore disposed of only for a price. But the settlement idea was not wholly absent, as appears from the transactions with Cutler.²

ENCOURAGEMENT OF IMMIGRATION

The encouragement of immigration by means of head rights or concessions was the common practice from earliest times. It prevailed chiefly in the southern and middle colonies as there the religious and political motives impelling settlement were not so strong as in the Puritan colonies, so that economic induce-

¹ Thomas Hart Benton, *Thirty Years View*, I, 104, 106.

² *Life, Journals, and Corresp. of Rev. Manasseh Cutler* (Cutler and Cutler), I, 194-195. Letter to Nathan Dane, March 16, 1787.

ments had to be made more powerful. The earliest suggestion of a system of head-rights appears in Virginia under Dale's administration. About 1614, that governor assured to every man with a family who came into the colony, a house with four rooms, and twelve acres fenced and adjacent to the house, for cultivation.³ The instructions to Yeardley in 1618 carried out the idea into a definite system.⁴ For every person who before midsummer, 1625, was transported into the colony and remained there three years, the share holder at whose expense he came, was to receive fifty acres on the first division of lands and fifty on the second; this was to hold even if the immigrant died after embarking. This arrangement was soon extended so that anyone who emigrated to the colony or carried over another person became entitled to fifty acres of land. The "ancient" adventurers and planters who were there in the colony before Sir Thomas Dale came away were granted twice as much land as later colonists in consideration of the great difficulties and dangers they had had to overcome. This right to fifty acres for transportation into the colony was jealously guarded. The crown permitted its continuance after the company was abolished,⁵ and in the convention of 1651 between Virginia and the English commonwealth, it was expressly stipulated for.⁶ In the remonstrances of 1676 against the stoppage of the charter, there was more than one statement to the effect that the prosperous growth of the colony was due to the encouragement given by these head rights.⁷ The rights became increasingly important, and formed the most common basis of securing a patent.

The great proprietors of Maryland, the Carolinas, Pennsylvania, and the Jerseys, also granted liberal head-rights under the name of "concessions" or "conditions of plantation." These concessions were altered from time to time. Lord Baltimore's first issue of conditions of plantation promised that every head of a family who provided for their outfit and transportation, should

³ Ralph Hamor, *True Discourse, etc.* (Albany, J. Munsell, 1860), p. 19.

⁴ *Va. Hist. Mag.*, II, 156, 157, 164.

⁵ Hening, *Statutes of Va.*, II, 530.

⁶ Jefferson, *Notes on Va.* (Ford), 152.

⁷ Hening, *Statutes*, II, 541.

receive one hundred acres for himself, the same amount for his wife (if she accompanied him), and for each adult servant, and fifty acres for each child under sixteen years.⁸ Any adventurer who in the year 1633 took into the province for the purpose of settlement five men between the ages of sixteen and sixty received two thousand acres.⁹ In 1636 one thousand acres were promised for every five men brought over by a colonist or adventurer.¹⁰ In 1642 the amount of land given each adult settler was reduced to fifty acres.¹¹ Similar bounties were offered by the very elaborate conditions of 1648.¹²

The concessions issued by the other proprietors were essentially the same as those of Maryland. The Carolina proprietors in 1663 gave to every "undertaker" one hundred acres for himself, and fifty acres for every man servant and thirty acres for every woman servant whom he transported.¹³ In 1665, the Barbadians were promised five hundred acres of land in return for every thousand pounds of sugar subscribed to the enterprise.¹⁴ The Concessions and Agreement of 1665 set forth an elaborate system of headrights varying for every year from 1665 to the close of 1667.¹⁵ Within the county of Clarendon the maximum for freemen was to be one hundred acres, and the minimum fifty acres; those coming in 1665 were to receive the larger amount. The corresponding offers in Albemarle county were eighty and forty acres respectively. The New Jersey headrights offered this same year were larger by one-half than those promised for Clarendon county in Carolina. Many changes were made later on in the amount given. Penn was the least generous of the proprietors in this respect, but he granted masters fifty acres for every servant brought over, and the same amount to every servant on the expiration of his term of service.¹⁶ The Dutch West India company issued the Freedoms and Exemptions of 1629, granting the huge patroonships along the Hudson;

⁸ *Calvert Papers*, I, 138.

⁹ *Md. Arch.*, Proceedings of the Council, 1636-1667, III, 47.

¹⁰ *Ibid.*

¹¹ *Ibid.*, 99-100.

¹² *Ibid.*, 223 ff.

¹³ *N. C. Rec.*, I, 45.

¹⁴ *Ibid.*, 77 et seq.

¹⁵ *N. C. Rec.*, I, 86-90.

¹⁶ Hazard, *Annals of Pa.*, 518.

In addition, small grants of two hundred acres were made to every one who conveyed himself and five others to New Netherlands. Any private person could take up as much land as he could properly improve and enjoy it as his own property. It was because of the many settlers thus attracted to the colony that the English, when they took charge, were not obliged to advertise for settlers as the other provinces had had to do. The last instance of head-rights offered by a colony was that of Georgia in granting fifty acres to each immigrant.¹⁷

In New England the head-right idea appears in the action of the Massachusetts Bay Company allowing the stockholders fifty acres for each person transported, while others outside the company going with their families at their own charge were to have the same amount with such further portion, "according to their charge and quality," as the governor and council might determine.¹⁸ Land was granted freely to actual settlers, not, as in the proprietary colonies, with the object of obtaining revenue in the form of quitrents, but because no profit or revenue was sought except in the form of taxes.¹⁹ Townships were given to communities, together with additional tracts, later on, in many cases. Tracts were occasionally bestowed on individuals. Within the towns, lands were distributed gratis among the inhabitants. In settling new plantations, old towns usually gave the land to the new settlers. Roxbury, in 1661, voted to give thirty men one-half its tract called Woodstock, in one square at their own selection, if they would settle it; the other inhabitants were to have the rest.²⁰

SETTLERS ASSISTED

Land bounties were not confined alone to immigrants. Settlers at particular places within the colonies were favored in the same way. The Virginia company, after the massacre of 1622, offered every family ten acres upon which to start anew, till

¹⁷ *An Account showing the Progress of the Colony of Georgia in America from its first Establishment*, London, MDCCXLI. Quoted by C. C. Jones, *Hist. of Ga.*, I, 106.

¹⁸ *Mass. Rec.*, I, 42-44.

¹⁹ Osgood, *American Colonies in the 17th Century*, II, 16-17.

²⁰ Eggleston, *Land System of the N. Eng. Col.* (N. Y., 1880), 27.

they could again return to their own "dividends."²¹ To stimulate the growth of James City, a house lot and garden lot were offered to every settler who would build within six months;²² by similar gifts of land, Kiskiyacke, Middle Plantation, a certain tract in North Carolina, and other places, were peopled by Virginia.²³ In this same manner, as has already been mentioned, population spread by groups throughout New England. In 1674 Connecticut ordered some land sold but not till 1737 was any extensive sale made. Massachusetts delayed till 1760 before disposing of townships at auction. Andros, on becoming governor of the duke of York's province, caused land to be distributed among the inhabitants on South river (the Delaware) for the purpose of promoting agriculture.²⁴ It was a common policy to bestow a gratuity on servants at the end of their term of service; in South Carolina one hundred acres were thus given, in Virginia and Pennsylvania, fifty acres.²⁵ A town meeting of the Newport plantation in 1639 ordered "that every such servant as shall abide with any of us that first came forth, shall upon their due admission, have ten acres of lande given unto them gratis."²⁶

IMMIGRANTS AGAIN SOUGHT

Assisted by these liberal donations, settlement throughout the colonies went on apace. Toward the close of the seventeenth century immigration slackened, and people became absorbed in adjusting themselves, repelling the Indians and French, and developing their resources. This continued till about the third decade of the eighteenth century when a second colonizing movement began, directed this time toward the frontiers. This powerful impulse made itself felt from North to South, and resulted in a veritable land-boom participated in by some of the colonial authorities as well as by private proprietors. Foreign immigrants were again eagerly sought after. Protestants

²¹ Neill, *Hist. of the Va. Co. of London*, 328, 329.

²² *Va. Hist. Mag.*, XI, 396.

²³ Hening, *Statutes of Va.*, I, 139, 199, 208, 257, 380.

²⁴ Hazard, *Annals of Pa.*, 387, 409, 415, 429.

²⁵ *Ibid.*, 518; Beverley, *Hist of Va.*, 238.

²⁶ *R. I. Col. Rec.*, I, 88.

especially were warmly welcomed, and printed proposals were scattered broadcast in western Europe. The promise of land bounties was again adopted as the most attractive inducement to settlers though other encouragements were also extended, as naturalization and exemption from the payment of quitrents and levies. In the short period between 1732 and 1738 there was tremendous activity in territorial matters. The trustees of the new colony of Georgia were busy settling affairs and bestowing a fifty-acre lot on every settler;²⁷ the assembly of South Carolina were interested in filling up the new townships recently laid out on the rivers;²⁸ population was pouring into the two frontier counties of Virginia, Spottsylvania, and Brunswick, under the policy of exempting settlers there from purchasing rights, and from quitrents for seven years, for all grants not exceeding six thousand acres;²⁹ the Maryland proprietor was offering every person with a family, who settled on any of the backlands between the Potomac and Susquehanna rivers, two hundred acres gratis, with exemption from quitrents for three years, and one hundred acres to every single person, man or woman, between fifteen and thirty years of age;³⁰ and President Clark in New York was considering a plan to divert to that province some of the multitudes flocking to Pennsylvania. Clark proposed, with the consent of the governor and council, to give away one hundred thousand acres, in lots of two hundred acres to a family, to the first five hundred Protestant families who should come from Europe. They were to pay simply the expense of surveying and the quitrents.³¹ In these same few years there was wonderful activity in taking up lands in Maine. The general court believed that many men had removed to other colonies because unable to obtain lands at home on encouraging terms; therefore, to obviate that difficulty, it began to make grants of its eastern territory on a most lavish scale.³² Townships were given to officers and soldiers or their heirs, to

²⁷ Moore, *Voyage to Georgia* (London, 1744), pp. 23-33. Quoted in Jones, *Hist. of Georgia*, I, 221.

²⁸ S. C., *Statutes at Large*, III, 366.

²⁹ *Va. Hist. Mag.*, XIII, 14; *Writings of Col. Byrd* (Bassett), 406-407.

³⁰ Kilty, *Landholder's Assistant*, 230.

³¹ *Doc. Rel. to Col. Hist.*, N. Y., VI, 60-61.

³² Williamson, *Hist. of Me.*, II, 180.

associations of men, to old towns (as for example, Marblehead, which complained that it was straightened in its accommodations); and lastly, small tracts were freely given to individuals who had suffered in the wars. In fact, Hutchinson says preferences were encouraged and even sought after to entitle persons to be grantees.³³ Private proprietors no less than the General Court were zealously stimulating settlement. Samuel Waldo, a large owner in the Muscongus patent, was booming his estate by means of broadsides scattered at home, and abroad among the Germans, Irish, Scotch, and Dutch, promising one hundred acres of land for no other consideration than the annual quitrent of one pepper corn. By this means the present town of Warren was settled by Scotch-Irish in 1735, and in 1742 the "Lower Town on the St. George's" was begun by forty settlers.³⁴ The proprietors of townships in the Maine wilderness, years later, also gave settlers' lots very freely in order to open up their property. In 1761 Augusta, Maine, was laid out in regular tiers of lots; of these the proprietors reserved for themselves every third lot in the front tier or range along the river, and all the lots in the second range; the settlers were given every first and second front lot and all the lots in the third range.³⁵ It practically amounted to this, that the proprietors gave away five hundred acres out of every nine hundred acres. The township of Farmington in 1780 was divided into alternate lots of two hundred and two hundred and fifty acres, the former being called settlers' lots as they were given to any one who would take up a residence and actually improve them, and the latter, proprietors' lots.³⁶

During this period of territorial development, Pennsylvania and Lord Fairfax's vast estate in Virginia were almost the only places in which the system of land bounties did not prevail to some extent. Though throngs of penniless immigrants kept pouring into Pennsylvania, yet the proprietors persistently refused to give up any land without some compensation. They were finally obliged to grant preëmption rights in order to se-

³³ Hutchinson, *Hist. of Mass. Bay*, II, 331.

³⁴ Cyrus Eaton, *Hist. of Thomaston, Rockland, S. Thomaston, Me.*, I, 41, 51, 55.

³⁵ James W. North, *Hist. of Augusta, Me.*, p. 84.

³⁶ F. G. Butler, *Hist. of Farmington, Me.*, pp. 25-26.

cure any financial returns from the squatters. The policy of donations was resorted to much later during the Indian wars, when military exigencies required the encouragement of settlements along the line of march of the armies. In 1755 Governor Morris offered to grant lands west of the Alleghanies free of purchase money and exempt from quitrents for fifteen years. Such of these lands as should be settled within three years after the removal of the French were to be patented without fees except those paid for surveying.³⁷ Settlers, however, had taken up the lands without waiting for this permission.

This same homestead policy appears in many of the schemes for new colonies broached from 1754 on. Franklin in 1754 and Samuel Hazard in 1755 both proposed that every person in their projected colonies should be given a certain quantity of land.³⁸ George Rogers Clark in 1776 advised the Kentucky people to employ the lands of the country as a fund to obtain settlers, and establish an independent state, in case Virginia abandoned them.³⁹ Timothy Pickering drew up a plan for a military state at the close of the Revolution, and one of the provisions was that fifty acres should be granted to every head of a family, and the same amount for every additional member.⁴⁰

Before the Revolution was ended the system of free land grants had been adopted as a regular part of the land policy of three states. Virginia and North Carolina gave actual settlers four hundred acres and six hundred and forty acres, respectively, at the merest nominal price, on the "Western Waters."⁴¹ Massachusetts offered emigrants one hundred acres anywhere on the public lands of Maine, (except by the rivers and navigable waters) on the sole condition of clearing sixteen acres in four years.⁴²

³⁷ Shepherd, *Prop. Govt. in Pa.*, Columbia Univ. Studies, VI, 52.

³⁸ Franklin, *Writings* (Bigelow ed., 1887-88), II, 474; Christopher Gist's *Journals* (Darlington), 262.

³⁹ Ill. State Hist. Lib. Colls., I, 186.

⁴⁰ Pickering, *Life of Pickering*, II, 547.

⁴¹ Hening, *Statutes of Va.*, X, 35-45; *Public Acts of N. C.*, I, 204-208.

⁴² Williamson, *Hist. of Me.*, II, 507.

SIMILARITY TO PRESENT HOMESTEAD LAW

Certain conditions of settlement were usually demanded in return for all land bounties. Like the modern homestead law, they comprised occupation and improvement within a term of years. In Virginia to seat the tract meant to build a house, plant one acre, and keep stock for one year; if this were not done within three years, the land lapsed to the state. Later on, merely to raise a crop of corn, or to reside on the spot one year, created a right to four hundred acres.⁴³ Settlers' duties were somewhat more exacting under Massachusetts laws. They included taking actual possession and within three years, building a house of a certain size, usually eighteen or twenty feet square, and clearing five to eight acres fit for mowing and tilling.⁴⁴ Private proprietors of townships often asked harder terms than the legislature did: a larger house, greater amount of land cleared, residence for a longer time.

MILITARY BOUNTIES

Next to the encouragement of settlement, land bounties were most commonly used to reward military service. This practice was followed in turn by the colonies, by the British government, the new continental congress, and the individual states. Virginia as early as 1646 granted one hundred acres to Henry Tyler, commander of the palisadoed settlement at Middle Plantation.⁴⁵ Lord Baltimore rewarded with lands several persons who had done good service at the time of Ingle's insurrection.⁴⁶ Connecticut bestowed a gratuity of one thousand acres upon Captain John Mason for his service in the "Pequett war;" of this he gave five hundred acres to five of his soldiers.⁴⁷ The policy gradually developed of using military bounties to promote compact settlement on the frontier by men able to defend

⁴³ Hening, *Statutes of Va.*, II, 244; X, 40. Compare *Revised Code of Va.* (1819), II, 339, for other forms of satisfying the requirements of seating and planting.

⁴⁴ Williamson, *Hist. of Me.*, II, 180, 507.

⁴⁵ *William and Mary College Quarterly*, I, 85.

⁴⁶ Kilty, *Landholder's Assistant*, 79, 80.

⁴⁷ *Conn. Col. Rec.*, 1636-1665, 208.

it, and in this way to secure protection without the expense of a standing army. It was virtually the Roman idea of armed occupation of a territory not firmly incorporated. In Virginia the practice began in 1679 by an act granting large tracts to Major Lawrence Smith and to Captain William Byrd on condition that they settle on the land two hundred and fifty men, fifty of whom should be well armed and in constant readiness.⁴⁸ This offer was extended to all. In 1701 another act extended the policy. Large quantities of land, between 10,000 and 30,000 acres, were offered in lots of two hundred acres to a person, to companies of men who would settle together on the frontier and maintain one warlike Christian man, completely armed and equipped, for every five hundred acres granted.⁴⁹ Nothing came of this project. Connecticut may have had the same purpose as Virginia in giving to the volunteers of the Narragansett war a plantation in the conquered country.⁵⁰ Massachusetts' action shows very clearly that settlement rather than reward was the object of its military bounties. Although wars and expeditions had been frequent, yet no grants for such services were made till about fifty years later, in 1733 and onward. In those years the general court suddenly manifested an enthusiastic interest in the development of the frontier lands, especially those near disputed boundaries, and caused three lines of new townships to be laid out. But these were of no use without settlers. Thereupon nine new townships were granted to the officers and soldiers who had served in King Philip's War in 1676, or to their heirs. Only seven of these grants were taken. The men who participated in Phipps's expedition to Canada in 1690 or their descendants also received lands.⁵¹ Individual sufferers from the wars, such as crippled or disabled soldiers, widows and children of soldiers, and those who had endured captivity, were generally compensated with liberal grants, usually two hundred acres. Another indication that in all this the general court was guided chiefly by the desire to promote settlement, is found in the

⁴⁸ Hening, *Statutes of Va.*, II, 448-454. This scheme was not approved in England. See Introduction in *Writings of Col. Wm. Byrd*, XXI, (Bassett, editor).

⁴⁹ Hening, *Statutes of Va.*, III, 204-206.

⁵⁰ *Conn. Col. Rec.*, 1689-1706, pp. 186, 202, 230.

⁵¹ Hutchinson, *Hist. of Mass. Bay*, II, 331; Douglass, *A Summary, etc.*, I, 504, 505; Williamson, *Hist. of Me.*, II, 181-182.

fact that lands were freely given at the same time on other pretexts than those of military deserts.⁵² Pennsylvania, by its action of 1755, offering lands on the frontier to all persons in neighboring colonies as well as in the colony itself, who would join an expedition to expel the French, had the additional purpose of strengthening the frontier as well as attracting military aid.⁵³

The British authorities made large use of military bounties. When the French and Indian war began, Lord Dinwiddie of Virginia encouraged enlistment by promising to divide among the officers and soldiers a large tract on the Ohio. After the war the royal proclamation of 1763 extended to all men of the army and navy liberal grants in proportion to rank.⁵⁴ These appear to have been simply rewards for service without any idea of thereby promoting settlement. There are indications, however, that the government and army officials desired to establish military settlements on the frontier at strategic places, by encouraging reduced officers and soldiers to settle there. De Lancey, lieutenant-governor of New York, advised such an undertaking, especially with reference to the lands lying between Fort Edward and Fort George, on the route to Canada, and his successor issued a proclamation to encourage such settlement.⁵⁵ The Board of Trade agreed with this, and advocated the plan of granting tracts in that region to the colonels of several provincial battalions. In a paper addressed to Pitt,⁵⁶ they said that the project of settling the lands adjacent to the great lakes and waters was a measure of true wisdom and sound policy as the possession of such tracts would eventually give possession of the country. They considered the provincial officers and soldiers the very best persons to make such settlements because of their industry and knowledge of the best method of

⁵² Williamson, *Hist. of Me.*, 180-182.

⁵³ Hening, *Statutes of Va.*, X, 661-662.

⁵⁴ *Ibid.*, VII, 666. The quantities given were as follows:

Field officer	5,000 acres.
Captain	3,000 "
Subaltern	2,000 "
Non-commissioned officer	200 "
Private	50 "

⁵⁵ *Doc. Rel. to Col. Hist.*, N. Y., VII, 437; N. Y. Hist. Soc. *Colts.*, 1876, pp. 178, 183.

⁵⁶ *Doc. Rel. to Col. Hist.*, N. Y., VII, 428. Date of the document, Feb. 21, 1760.

carrying out such an undertaking; at the same time their training in military discipline and the use of arms would enable them not only to defend that region but also the neighboring colonies to which they would be a frontier. Thomas Pownall had advanced the same idea of "a numerous and military colony" to be established beyond the mountains four years earlier, in a paper on North America which he drew up at the request of the duke of Cumberland.⁵⁷ In 1763 a pamphlet entitled "The Expediency of Securing Our American Colonies," et cetera, appeared in Edinburgh, and this strongly recommended that the soldiers and sailors lately dismissed from service should be supplied with lands in the newly acquired country on the Ohio, on condition of military service when wanted.⁵⁸ Nothing resulted from all these suggestions. In New York, however, many of the military bounties were laid out along the eastern and western borders of Lake Champlain and Lake George, peculiarly important country from a strategic point of view. In 1763 rumors were current in that province, as a result of some conversations with army officers, that General Amherst intended to have a separate government erected at Crown Point, where he was building a large and extensive fortification, and to settle the lands after the peace with disbanded soldiers.⁵⁹ It is very probable that there was on foot among military officials a scheme for some such communities of soldiers at important points, as in May, 1764, we find General Gage writing from New York as follows to Colonel Henry Bouquet:⁶⁰ "My chief Design in demanding a Tract of Land for the King is in order to form a military Establishment near Fort Pitt; by granting the Land in Lotts of 100 or 150 Acres or (sic) Military Tenures and on such conditions, as shall be proper for the welfare and security of such a settlement, dependant only on the King and his Generals. They should have Courts of Justice of their own and in every respect be a little Community by Themselves of which

⁵⁷ G. H. Alden, *New Governments West of the Alleghenies before 1780* (Bulletin of Univ. of Wis., Madison, 1897), p. 5.

⁵⁸ *The Exped. of Securing our Amer. Col. by settling the Country adj. to the Miss., etc.*, Edinburgh, 1763, pp. 43-44.

⁵⁹ N. Y. Hist. Soc. *Colls.*, 1876, p. 263. Letter from Cadwallader Colden to the Lords of Trade, dated N. Y., Dec. 9, 1763.

⁶⁰ Michigan Pioneer and Hist. Soc. *Colls.*, XIX, 257-258.

the Commandant of the Fort should be Governor." Then followed certain details of the project which was to be extensive enough to settle the whole region around Fort Pitt in different townships. Gage asked Bouquet, who had a thorough knowledge of the country in question, to sketch out at his leisure the spots proper to begin upon and how to proceed. The answer to this request is probably contained in the military papers annexed to the historical narrative of Bouquet's expedition in 1764, which papers were in all likelihood written by Bouquet.⁶¹ There is no evidence that such establishments were formed.

LAND BOUNTIES DURING THE REVOLUTION

During the Revolution, Congress and the several new states made much use of land bounties to stimulate service in the army. In August, 1776, before there was any public domain, Congress passed an act offering fifty acre lots to all Hessians and other foreigners who would leave the British service; later on a fixed scale of bounties according to rank was adopted.⁶² The next month a similar measure was passed providing for the officers and soldiers of the patriot army.⁶³ In order to prevent the grantees from disposing of their lands during the war, Congress refused to make any grant to persons claiming under the assign-

⁶¹ *An Hist. Acct. of the Expedition against the Ohio Indians in the Year MDCC LXIV under the command of Henry Bouquet, Esq.*, publ. by a Lover of His Country, London, 1766. See ante.

Cadwallader Colden had once thought of giving his sentiments as to the most proper method of settling the uncultivated lands in New York but, because of some censure from the board of trade regarding some of his measures, he withheld his views on the matter. (N. Y. Hist. Soc. *Colls.*, 1876, p. 182.) This is to be regretted, as his experience as surveyor general of the province for forty years would have made any suggestion from him very valuable.

⁶² *Journals of Congress*, V, 655, 707.

⁶³ *Ibid.*, 763, 781; VI, 112-113. These grants were smaller than those made to the Hessians. Privates received twice as much as they did by the proclamation of 1763. The amounts given were as follows:

Colonel	500 acres.
Lieutenant colonel	450 "
Major	400 "
Captain	300 "
Lieutenant	200 "
Ensign	150 "
Non-commissioned officer and private.....	100 "

By an act of Aug. 12, 1780, Congress gave a major-general 1,100 acres and a brigadier-general 850 acres.

ment of any military person.⁶⁴ By an act of April 23, 1783, Congress gave bounties to officers and refugees from Canada.⁶⁵

Virginia was more liberal than Congress in rewarding her troops, having it more in her power.⁶⁶ Regiments on both state and continental establishments received land grants. In the spring of 1779 one hundred acres were promised to every private at the end of the war, and as much to the officers as was given to those of similar rank in the continental army.⁶⁷ In the fall of the same year these quantities were increased to twice the amount in the case of soldiers, sailors and noncommissioned officers, and ten times as much in the case of regular officers.⁶⁸ But the laws passed in May, 1779, gave each soldier only two hundred acres; those who enlisted for the defence of the Illinois country, one hundred acres.⁶⁹ To satisfy these grants, a quantity of land was reserved from the cession in 1781 of the north-western territory to the national government.⁷⁰ Acts of 1780 and 1782 increased the military bounties by a considerable amount.⁷¹ To such an extent did Virginia carry her liberality that even the Vincennes settlers in the new county of Illinois who had helped Clark were each given four hundred acres.⁷²

Massachusetts, Connecticut, New York, Pennsylvania, Maryland, North Carolina, and South Carolina all granted military bounties, which in most cases were to be located within a tract set aside, as in Virginia, exclusively to satisfy these claims. The effect of this system was to accustom the people to the idea of the government giving away public land.

⁶⁴ *Journals of Congress*, V, 788.

⁶⁵ *Ibid.*, VIII, 144.

⁶⁶ For digest of laws regarding military bounties see Hening, X, 161; XI, 559-565.

⁶⁷ *Ibid.*, X, 24.

⁶⁸ Hening, X, 160, 466-467. The amounts were as follows:

Colonel	5,000 acres.
Lieutenant colonel	4,500 "
Major	4,000 "
Captain	3,000 "
Subaltern	2,000 "
Non-commissioned officer	400 "
Soldier or sailor	200 "

⁶⁹ Hening, X, 26, 565.

⁷⁰ *Ibid.*, 564-566.

⁷¹ *Ibid.*, 331, 375; XI, 84.

⁷² *American State Papers*, Public Lands, III, 382.

BOUNTIES FOR SERVICES

Besides donations for purposes of settlement and military service, there was a third class of grants to reward a variety of services and to encourage useful enterprises. Grants for education and for the Indians were important but will not be considered here. New England recognized valuable public service by gifts of land. The leading magistrates and clergy of Massachusetts received generous tracts because of their "adventure" or that of their ancestors. Among those thus benefited were Winthrop, Cradock, Saltonstall, and Dudley; their representatives later on received additional territory.⁷³ The Virginia company was accustomed to make grants to those who had conferred any benefit on the colony or company; this was done in the case of Sir John Walstenholme for his kindness in lending the company four hundred pounds without interest.⁷⁴

Industrial undertakings were especially furthered by this particular form of subsidy. Connecticut desired to become immediately self-supporting as regarded the staple commodities; therefore in 1640, it promised to every person who would look out land in which English grain could be soonest raised, one hundred acres of plowing ground and twenty acres of meadow for each team the grantee possessed.⁷⁵ Lord Baltimore gave two or three hundred acres to a man who intended to plant a vineyard.⁷⁶ This policy was followed, however, oftener in the case of infant industries in the manufacturing rather than the agricultural line. In Virginia, to encourage the building of mills, a favorable plot for this purpose could be condemned to the use of the mill, usually an acre or two.⁷⁷ Adventurers who transported Captain Norton and his people to the colony for setting up a glass furnace, had lands confirmed to them; these

⁷³ Egleston, *Land System of the N. Eng. Col.*, 19-20.

⁷⁴ Brown, *First Republic in America*, 344. Ed. Ingle, *Local Instit. of Va.*, Johns Hopkins Univ. Studies, III, 139.

⁷⁵ *Conn. Col. Rec.*, I, 1636-1665, 58.

⁷⁶ Kilty, 80.

⁷⁷ Hening, II, 260; III, 110, 401. This was also done in Tennessee. (Putnam, *Middle Tennessee*, 304.) In 1814 Tennessee settlers in Harrison county, Indiana territory, applied to the government for a donation of land for the erection of a water grist mill and other machinery. The request was not granted. *Am. State Papers*, Pub. Lands, II, 739.

may have been no more than ordinary headrights.⁷⁸ In 1622 Captain Thomas Barwick with twenty-five shipwrights for building houses, boats and pinnaces, came to Virginia, and was to be aided in his enterprise with at least twelve hundred acres of land.⁷⁹ Three thousand acres were given in Maryland to a man who had covenanted to bring over from England at least twenty people among whom were "Artificers, Workmen, and other very useful persons."⁸⁰ This class of grants was especially frequent in New England. One man received a grant on condition "that he go on in the business of powder," another for "being the first that set upon printing." Owners of iron works for mining received a large grant in 1645. In 1648 a grant was made to J. Winthrop, Jr., on condition that he establish salt works on Massachusetts Bay. Governor Endicott received a grant in 1651 on condition of setting up copper works.⁸¹ In 1750, Colonel Williams, founder of Williams College, obtained from the general court a grant of two hundred acres on condition of reserving ten acres for the use of a fort, building a grist mill and saw mill, and keeping them in repair for twenty years for the use of settlers.⁸²

Similar rewards were given in Massachusetts for other kinds of service, such as promoting settlement, arranging the relations of settlers, teaching for life, writing the laws, and performing ordinary civil services.⁸⁴ Governor Barnard received a grant of Mt. Desert island for his efforts in settling the eastern lands. After the Revolution, Honorable Arthur Lee of Virginia was granted six thousand acres east of the Saco river for his services in London as colonial agent.⁸⁵

Private proprietors of wild townships in Maine gave lands freely for almost every purpose. Services in securing settlement were chiefly repaid in land lots. Harris of Lewiston, for his share in settling the town, received grants not only for himself but also one hundred acres for each of his five sons wherever

⁷⁸ Brown, *First Repub. in Am.*, 430.

⁷⁹ *Ibid.*, 474.

⁸⁰ Kilty, p. 79.

⁸¹ Citations found in Eggleston, *Land System of the N. Eng. Col.*, 20.

⁸² J. W. Barber, *Hist. Colls.*, p. 61.

⁸⁴ Eggleston, *Land System*, 20.

⁸⁵ Lapham, *Hist. Norway, Me.*, p. 11; Williamsen, *Hist. Me.*, II, 362.

they might choose.⁸⁶ Sometimes the agent received a lot for every family he settled. One agent for this service obtained eighty out of the one hundred and twenty lots in the town.⁸⁷ Surveyors took their pay in land at their choice.⁸⁸ Grist and sawmills were particularly desired, and in addition to liberal grants of sites favorable for such industries, one or more special inducements were often included such as the sole privilege of the stream, the right to cut lumber on the proprietors' land, use of the salt marsh and meadow for hay, use of the proprietors' boat, the right to keep a certain proportion of the lumber sawed, or a bonus on the completion of the mills.⁸⁹ Potters and blacksmiths were occasionally induced by grants to open up business and work at their trades.⁹⁰ In one instance, an interpreter was offered an extra hundred acres to settle in a new Maine town.⁹¹ The first settler at Bridgton, Maine, received four hundred thirty-five acres for keeping an inn, a small store of needed goods, and running a boat for six years.⁹² The proprietors of Sanford township gave Sir William Pepperell two hundred acres for building a blockhouse if completed within two years.

⁸⁶ E. Emery, *Hist. of Sanford, Me.*, p. 18.

⁸⁷ Locke, *Sketches of Hist. of Camden, Me.*, p. 53.

⁸⁸ Williamson, *Hist. of Belfast, Me.*, 113.

⁸⁹ See local histories of Maine towns, chiefly Lapham and Maxim, *Hist. of Paris, Me.*, 37, 42; Williamson, *Hist. of Belfast*, 679; Clayton, *Hist. Cumberland Co., Me.*, 320, 326, 373; Cyrus Eaton, *Hist. of Thomaston, etc.*, I, 83; W. B. Lapham, *Hist. Rumford*, 22.

⁹⁰ North, *Hist. of Augusta, Me.*, 70; Clayton, *Hist. Cumberland Co.*, 220.

⁹¹ McClellan, *Hist. of Gorham*, 17-32; North, *Hist. Augusta, Me.*, 35.

⁹² Clayton, *Hist. Cumberland Co.*, 218.

CHAPTER VII

SQUATTERS AND PREEMPTION RIGHTS

The national legislation of 1785 regarding land, which contemplated revenue only, provided no other means of acquiring title to land than by purchase. This entirely shut out the squatters—men who took up vacant land without any legal right, depending on time and their improvements to gain them a title. After many years the rigid national plan was altered here and there and made so adaptable to western conditions as to recognize these extra-legal settlements; at first only in specific, local instances, but more and more generously, till at last settlers were guaranteed a title in advance on the basis of their improvements and residence, and the term “squatters” gave way to the more honored name of “homesteaders.”

FIRST APPEARANCE OF THE SQUATTER

This practice of “squatting” on lands was one of the oldest traditions in the colonies, and had become too general to be wiped out by legislation. It had gone on steadily in the face of prohibitory laws, threats, and forcible eviction. It did not develop to any appreciable extent till the third decade of the 18th century; but there are occasional earlier evidences of the custom. Before the arrival of the Massachusetts Bay Company in New England, there were settlers without charter or grant living at various places within the limits of the Bay—among others Morton and his adventurers at Mt. Wollaston in Quincy, a few “stragling” people at Hull, and William Blackstone at Shawmut.¹ The first Connecticut settlers were legally trespassers on

¹ *Memorial Hist. of Boston* (Justin Winsor, editor), I, 78, 80, 83-85.

their territory, and could base their rights only on occupation and purchase from the Indians.² The Massachusetts law of 1640 that no one should settle on vacant land within the chartered limits without a permit, may have been partly caused by the presence of unwelcome squatters.³ In Maryland there were located, by 1648, Frenchmen and people of other nationalities who were incapable under the conditions of plantation of having any lands in the province.⁴ The early references in Virginia records to persons seated on lands deserted or claimed by others do not justify the assumption that they were without some legal right,⁵ but there is little doubt there were such settlers very early in the colony. In 1704 Colonel Byrd obtained an escheated patent near Bermuda Hundred and found on it a large number of smaller holders who had taken up the land of their own free will.⁶ Squatters were present in Pennsylvania at a very early date.⁷

WIDESPREAD CHARACTER OF THE MOVEMENT IN THE 18TH CENTURY

In the eighteenth century, the pushing American spirit was in active operation, and many a pioneer, impatient of delay, staked out a clearing in the forest without going through the formalities of the land office. The throngs of immigrants, especially after 1730, furnished many recruits to this class as they were ignorant of the land regulations, had little money, and realized only that there was much vacant land all around, and that they were in dire need of some.⁸ This movement was at first confined chiefly to the middle and southern states; not till after the peace of 1763 did it begin in New England to any appreciable extent.

Before 1724, squatters had begun to go in to that part of

² Andrews, *River Towns of Conn.*, J. H. U. Studies, VII, 21.

³ Channing, *Town and Co. Govt. in Colonies*, Johns Hopkins Univ. Studies, II, 24.

⁴ Kilty, *Landholder's Assistant*, p. 37.

⁵ *Va. Hist. Mag.*, IV, 159; XI, 56. Hening, I, 376.

⁶ Col. Wm. Byrd, *Writings*, (Bassett, editor) Introd., XXXV.

⁷ Shepherd, *Prop. Govt. in Pa.*, Columbia Univ. Studies, VI, 49.

⁸ *Pa. Archives*, 2nd Series, VII, 96-97. *Calendar Va. State Papers*, I, 220. Logan MSS, quoted by Rupp, *Hist. of Berks and Lebanon Counties*, p. 115.

North Carolina around Cape Fear river, extending from the Pamlico to the South Carolina line, which had been shut out from sale by the proprietors.⁹ It was speedily opened up when this occupation became known. German settlements were made in the Shenandoah Valley during several years prior to the issuance in 1729 of the earliest grant for that section.¹⁰ Many of these families afterward bought their right to the property from a Welshman who obtained a grant in 1730. Pennsylvania was at this time par excellence the home of the squatter. As early as 1725, about 100,000 acres had been taken up and improved by persons having not a shadow of right.¹¹ Secretary James Logan, in a letter to John Penn in 1727, regarding the German and Scotch-Irish immigrants, said, "Both these sorts sitt frequently down on any spott of vacant Land they can find, without asking questions. They say the Proprietor invited People to come and settle his Country, that they are come for that end and must live; both they and the Palatines pretend they would buy but not one in twenty has anything to pay with."¹² The boundary dispute with Maryland was a great obstacle in the way of making terms with the newcomers, for no lands could honestly be sold near the border, yet there many, especially of the Scotch-Irish, located. In 1730 these people were busy occupying Conestoga Manor, which included fifteen thousand acres of the best land in Lancaster county. "In doing this by force, they alleged that it was against the laws of God and nature that so much land should be idle while so many Christians wanted it to labor on and to raise their bread."¹³ Many of these settlers were not typical squatters in that they "sat down with a resolution to comply as others should with the terms of the government when called on."¹⁴ The Germans were espe-

⁹ *N. C. Records*, II, 529.

¹⁰ *Va. Hist. Mag.*, IX, 351; X, 34, 85.

¹¹ *Logan MSS.*, quoted by F. R. Diffenderffer, *The German Immigration into Pa.*, p. 233.

¹² *Pa. Archives*, 2nd Series, VII, 96-97. In 1729, Logan again called the proprietor's attention to "the settlement of those vast nos. of poor but presumptuous People, who, without any License, have entered on your Lands, and neither have nor are like to have anything to purchase with, etc." *Ibid.*, 127.

¹³ *Logan MSS.* quoted by Rupp, *Hist. Berks & Lebanon Cos.*, (Lancaster, Pa., 1844), 115.

¹⁴ *Pa. Archives*, 2nd Series, I, 492.

cially anxious to pay for the land and secure a sufficient right and title for the sake of their children.¹⁵ Ordinary squatters depended on residence and improvements to win them a title with, possibly, a small payment in addition. The proprietary agent desired to lay out the manor of Mask in 1743, but was unable to do so, as the Scotch-Irish, located on the spot, declared they were determined to keep possession and to prevent a manor being run out.¹⁶ By this time the early Pennsylvania squatters began to be annoyed by others who adopted their own tactics. New settlers crowded in and, knowing that the former occupants had no better right than themselves and that they were equally trespassers, encroached upon them and "sat down where they pleased, every man according to his forces, by himself or friends, (and) thereby occasioned great Quarling and disorders."¹⁷ Soon the presence of squatters on the lands not yet bought from the Indians threatened to cause serious trouble and the authorities were compelled to take active measures against the intruders. During the French war of 1745, advantage was taken of the confusion of the times to occupy a desirable valley on the Indian hunting grounds, called Big Cove; little by little people stole in, till there were about thirty families settled.¹⁸ But as the Indians had prophesied, the most drastic measures of ejection and destruction of cabins, proved ineffectual. By 1768 the settlers on unpurchased lands were again so numerous as to create great alarm of an Indian outbreak, and once more the assembly issued an order forbidding such settlers and ordering them to remove.¹⁹ After the purchase of a large tract in that year, the proprietors withdrew from sale and settlement the territory between Lycoming and Pine Creeks in order to quiet the Indians and refused to accept any surveys made thereon and published the most stringent prohibition against any settlement there. In defiance of this, men persisted in occupying the ground as boldly as they had always done.²⁰ Thomas Penn in 1774 declared it was impossible

¹⁵ Minutes of Provinc. Council, Pa. *Colonial Rec.*, III, 323.

¹⁶ *Pa. Archives*, 2nd Series, VII, 230.

¹⁷ *Ibid.*

¹⁸ *Pa. Colon. Records*, V, 440-451. (1745-1754.)

¹⁹ *Pa. Archives*, 1st Series, IV, 283-285.

²⁰ McKnight, *Pioneer Outline Hist. of N. W. Pa.*, p. 62.

to prevent the intrusion of people on their property and that their only resource was to appeal to the courts.²¹

The royal proclamation of 1763 did not prevent pioneers sifting into the western country, especially south of the Ohio, between that time and the Revolution. Many of the citizens on the Watauga hoped to hold their lands by virtue only of their improvements and hardships as first settlers.²² Before the Revolution was over both North Carolina and Virginia found that their lands on the western waters were taken up by great numbers of people who had not sued out patents or obtained legal titles, and who were determined to hold their lots by force, if need be.²³ Not only state lands but tracts owned by land companies had been thus occupied and improved without any specific agreement. A group of Scotch-Irishmen from Pennsylvania had settled on Washington's western lands near Pittsburgh, in 1773, in spite of a keeper who was stationed on the land to prevent interlopers coming in; they simply drove him away, and proceeded to build their cabins and clear a few acres.²⁴ Persons even began making clearings on the northwest side of the Ohio in 1779, though locations there had been expressly prohibited by law, because of the grave danger of an Indian war.²⁵

In the north, land regulations were similarly waived by venturesome pioneers. As early as 1752, men began to make clearings in the present Vermont without license or authority, and before 1775 several towns had been established in the following manner:²⁶ several squatters, independent of each other, would take up lots and build cabins; later, when a sufficient number had gathered, generally about thirty, they would combine and send to New York for a charter confirming them in their possessions, and their request was ordinarily granted. In 1773, Governor Tryon wrote the Earl of Dartmouth that the inhabi-

²¹ *Penn Letter Book*, quoted by Shepherd, *Prop. Govt. in Pa.*, Columbia Univ. Studies, VI, 51.

²² A. W. Putnam, *Hist. of Middle Tenn.*, p. 45. Petition and Remonstrance of Citizens at Watauga to N. C. provincial council, 1776.

²³ *Public Acts, N. C.*, I, 206. Hening, X, 38; Jefferson, *Writings*, II, 293.

²⁴ Hulbert, *Washington and the West*, pp. 146-147.

²⁵ Hening, X, 159, 161.

²⁶ *Vt. Hist. Gazetteer*, II, 808; J. C. Williams, *Danby, Vt.*, 15-18; Hubbard, and Dartt, *Springfield, Vt.*, 1-2.

tants of the eastern colonies were swarming over the country between lake Champlain and the Connecticut river without any right whatever.²⁷ Before the Revolution was over people began to pour into the central and eastern parts of Maine, and there was hardly any township, private patent, or public territory that did not have its quota of squatters when land affairs began to be straightened out in Maine after the war.²⁸ New York also had many such settlers to reckon with.²⁹ And the movement had never gone on more vigorously than in the years while Congress was discussing land ordinances. William Butler wrote John Armstrong, from Pittsburgh in March, 1785, "I Presume Council has been mad acquainted with the villiny of the People of this Country, the are flocking from all Quarters, settling & taking up not only the United States lands but also ~~this~~ States, many Hundreds has crost the Rivers, & are dayly going many with their family's, the Wisdom of Council I hope will Provide against so gross and growing an Evil."³⁰

In 1785 the Indians of Ohio had complained at Fort McIntosh that whites were entering and seizing their lands.³¹ Sufficient numbers of them were already on the spot to embolden one man, John Emerson, to the scheme of forming a new state.³² In the spring of that year, Ensign Armstrong was sent to drive off the intruders; on his return he reported that not a bottom from Wheeling to the Scioto but had at least one family, and he was assured there were 300 families at the falls of the Hockhocking, as many more on the Muskingum, and fifteen hundred on the Scioto and the Miami. Others were coming in forties and fifties.³³ About two months later Colonel Harmar informed Congress that the number lower down the Ohio was immense and that unless Congress entered into immediate measures, it would be impossible to prevent the lands being settled. A military force was sent again to drive off the settlers, burn their cabins

²⁷ *N. Y. Doc. Rel. Col. Hist.*, VII, 310, 403.

²⁸ *Acts and Laws of Commonwealth of Mass.*, 1780-81 (Boston, 1890-1894), chap. 113, p. 429. May 1, 1781. W. C. Hatch, *Hist. Industry, Me.*, 29-41; 83-85. Various local histories.

²⁹ *Laws of N. Y.* (Greenleaf), I, 487, April 14, 1782.

³⁰ *Pa. Archives*, 1st Series, X, 421. Mar. 10, 1785; p. 429, Mar. 11, 1785.

³¹ *St. Clair Papers*, II, 3.

³² *Ibid.*

³³ *Ibid.*, II, pp. 3, 4.

and destroy their crops, but it was all in vain. Year after year they came back. When Harmar made a tour of the Northwest in the summer of 1787 he found settlements at La Belle Fontaine, Grand Ruisseau, Cahokia and New Design where not one man had any legal right to the soil.³⁴

The practice continued in spite of opposition. On the floor of Congress in 1791 it was stated that the number of families seated without right or license on the lands south of the French Broad and Big Pigeon amounted to 300,000.³⁵ The government was kept busy, under Jefferson's administration, removing intruders from its new purchases from the Indians in the Southwest.³⁶ As new lands were opened up, and often in anticipation of that action, settlers moved in in increasing numbers. In the nineteenth century they were strong and numerous enough to receive the benefit of special legislation.

CHARACTERISTICS OF THE SQUATTER

The squatter was thus an obstinate fact with which every state, in its colonial days or later, had to reckon. Two characteristics made it impossible to get rid of him, his persistency and his presence in large numbers. Everywhere these men exhibited the same remarkable daring and dogged tenacity. The Indians of Pennsylvania told the authorities: "Brethren, we have thought a great deal of what you imparted to us, that ye were come to turn the People off who are settled over the Hills; * * * but we are afraid, notwithstanding the Care of the Government, that this may prove like many former Attempts, * * * the People will be put off now, and next Year come again."³⁷ They wished that some faithful people should be stationed on the ground with power to remove any one attempting to settle. Indians elsewhere had reason to feel the same way. It had always been one of the most difficult tasks of the colonial authorities to prevent encroachments on the Indians' hunting grounds. And yet Timothy Pickering in 1785 thought the only

³⁴ *Ibid.*, 30-32. Harmar to Sec'y of War, Nov. 24, 1787.

³⁵ *Annals*, 2nd Cong., 2nd Sess. Appendix, 1038. Nov. 8, 1791.

³⁶ Jefferson, *Writings*, I, 331, 334, 339.

³⁷ *Colon. Rec. Pa.*, V, 441.

effectual means of keeping settlers off the public lands, was to cease for an indefinite period to buy more lands as "few would be hardy enough to settle on Indian ground."³⁸ But it was immaterial to the squatter whether the lands belonged to the natives, the government, to individuals or companies; wherever he found desirable vacant land, there he cleared a few acres and built his log cabin. This he was determined to hold, by means of his rifle, if necessary. Yet these men were not always belligerent, as was shown in the western part of Pennsylvania when the officials came in 1750 to remove certain settlers on the Indian territory.³⁹ The offenders acknowledged they had no right or authority to take possession as they had done and admitted having seen one of the governor's proclamations forbidding such action. But their manner was not that of guilt; it was rather as if they had done something inexpedient. Two resisted being taken into custody, and when they were at some distance from the sheriff, called out, "You may take our Land and Houses and do what you please with them; we deliver them to you with all our hearts, but we will not be carried to jail."⁴⁰ In all the places visited, the settlers very cheerfully and voluntarily took out everything from their log houses, and assisted in burning the cabins. It is much to be doubted if their removal was more than a temporary one. Ordinarily, however, the squatters made themselves very disagreeable if brought to bay. Washington's lawyer told him that if "he succeeded in his suit against the settlers on his estate, they would probably burn his barns and fences."⁴¹ A Maine squatter is reported as saying to the legal owner of a tract, who ordered him not to use any more timber, "If I can't carry wood to my fire, I shall have to carry my fire to the wood."⁴² In all the acute troubles over land titles, such as occurred in the case of the New Hampshire grants, the Wyoming valley, the disputed tracts in southern and western Pennsylvania and on the land companies' patents in Maine, the same features appeared—attacks on agents and own-

³⁸ Rufus King, *Life and Correspondence*, I, 104-105.

³⁹ *Colon. Rec. Pa.*, V, 440-448.

⁴⁰ *Ibid.*, 442.

⁴¹ Hulbert, *Washington and the West*, p. 158.

⁴² H. Cochrane, *Hist. of Monmouth and Wales, Me.*, II, 525.

ers, murder of sheriffs and surveyors, raids by bands disguised as Indians, freeing prisoners from the jails, the use of tar and feathers and many minor forms of lawlessness and revolt. The Pennamite war in Pennsylvania had as an echo the so-called Malta war in Maine several decades later.

With men of such calibre it was early necessary to come to some kind of terms; there seemed no choice between compromise and incessant turmoil. As a result the custom arose of **granting** preemption rights, or rights to preference in buying a piece of land. When such rights were not allowed serious consequences followed. A good illustration of this is found in Maine after the Revolution.

ACUTE TROUBLES IN MAINE

Great troubles arose on the Maine lands owned by large companies, particularly those in the Kennebec region called the Kennebec purchase and the Pejepscot patent. After the Revolution these had not been surveyed and opened up for sale, but men settled on them in large numbers, among others, many disbanded soldiers. These people felt safe in doing this, as many of the proprietors had been Tories, and some were Englishmen; there was a firm belief that their lands were forfeited to the state, and that it would protect settlers, especially old soldiers, against any future claim from the disloyal owners.⁴³ Others, no doubt, took up lots, as had been done on the lands of the Virginia companies, under faith in the terms of sale publicly offered years before, which terms had been very liberal to actual settlers. But when peace was established with England, the courts sustained the former proprietors in their possessions, whereupon the latter immediately asserted their rights against the settlers and demanded hard terms. It was particularly galling to men who had served years in the patriot army to find themselves thus at the mercy of those who had either run away or had aided the enemy during the war. Some had already bought their lots from earlier improvers.⁴⁴ Some squatters who saw very early that they would lose their lands, saved themselves

⁴³ Hatch, *Hist. of Industry, Me.*, p. 84.

⁴⁴ H. H. Cochrane, *Hist. Monmouth and Wales*, II, 518.

at the expense of others by selling out, often at a high price, to strangers who knew nothing of the circumstances.⁴⁵ Several families moved away to wild lands in the eastern part of the state, where tracts were given them in exchange for their former holdings.⁴⁶ But most of the settlers resisted doggedly for over two decades, defending themselves by force, and in every possible way hampered and terrified the agents and officers sent against them. The state tried to help matters by passing the "betterment act" in 1798 by which all settlers who had been in possession six years or more were given the improvements they had made, but the trouble had reached too acute a point to be calmed by that means. A little later the settlers on the Pejepscot purchase were especially embittered because that company refused to abide by the award of the general court in 1800, in which it was provided that every settler should be quieted with one hundred acres at a reasonable price. The whole dispute had to be gone all over again, and was not finally settled till 1814.

In 1802, the general court appointed commissioners for the Kennebec purchase, to examine the lands, give the settlers a hearing and then fix the price to be paid by each person who had been there one year or more. The commissioners were Peleg Coffin, state treasurer, Elijah Brigham, judge of the court, and Colonel Thomas Dwight. Captain William Allen, agent for the settlers, described them as "high-toned Federalists who had no sympathy for men who, as they believed, were trespassers on the lands; a very unfortunate committee for the poor settlers."⁴⁷ The people were utterly without money and had to pay Captain Allen for his services in grain. All the cash he got from them towards defraying the expenses was one silver dollar. The commissioners stayed at a tavern and did not take the trouble to view any land except that immediately around them near the Kennebec river, and this happened to be fairly fertile and prosperous looking. They had received glowing descriptions from the proprietary agents, but these did not truthfully represent the country remote from the river; inland,

⁴⁵ Ibid., II, 522.

⁴⁶ Ibid.

⁴⁷ W. C. Hatch, *Hist. of Industry, Me.*, 83-85; contains the journal of Capt. William Allen.

stones abounded, roads were extremely rude, and signs of poverty existed everywhere. The result of the appraisal was keenly disappointing. Captain Allen wrote,⁴⁸ "Instead of adopting the price of lands made by the state they doomed us to pay more than double. The state price had been from twenty-five to fifty cents an acre, and the committee appraised the lots in Industry, from one to two dollars and a quarter an acre. My lot was put at one dollar and ninety cents an acre, with thirteen months interest, two dollars for a deed, twenty-five cents for the award, and seventeen cents for the acknowledgment of the deed, all to be paid in specie, in Boston, before the first day of June, 1804. By great exertion selling my oxen and all the grain and corn I had, and borrowing of a friend in Winthrop ten dollars, I made the payment. I was obliged to pay two dollars to send the money to Boston. Thus my lot cost me two hundred and seven dollars instead of fifty dollars which I expected to pay. There were thirty settlers who entered into submission to have their lands appraised; ten only could raise the money by their own resources; ten others obtained assistance from friends who advanced the money and held the land for security; and the other ten gave up all and abandoned their possessions. The commissioners did not go to view any of our land as it was expected they would do." Captain Allen felt he had paid twice as much as his land was worth, but his efforts to obtain redress failed.

Troubles in Kennebec county, centering about Augusta and Lewiston, continued. No jury could be found to convict men who had murdered a surveyor, so completely were the people in sympathy with the offenders.⁴⁹ At length a serious outbreak in 1810, called derisively the Malta war, caused the state to interfere actively, and bring the long contest to a close, not, however, without great expense. One of the proprietors, R. H. Gardiner, said later on⁵⁰ that if the company had, even as late as 1799, resumed its former policy and given to the settlers half the land, if so much had been required for each to have one hundred acres, or if they had offered to sell at very low prices

⁴⁸ W. C. Hatch, *Hist. of Industry, Me.*, 84-85. Journal of Wm. Allen.

⁴⁹ H. H. Cochrane, *Hist. Monmouth and Wales*, II, 529.

⁵⁰ Hatch, *Hist. Industry, Me.*, 29.

to actual settlers, there can be little doubt that the remaining portions would have been of more value than the whole proved to be.

ORIGIN OF PREEMPTION RIGHTS

The privilege of preëmption had its origin and development in the middle and southern colonies wholly. It arose from the circumstances of individual settlement and therefore found small place in the ordered community life of New England till after the Revolution, when individual settlement became more frequent.

The word "preëmption" does not seem to have been used in colonial times, but the idea was present from an early period under the form of giving a preference in land grants for various reasons. At first it was customary to give owners of land certain preferential rights to adjoining territory. Proprietors of highlands in Virginia and North Carolina possessed practical preëmption over contiguous swamps or sunken grounds through the requirement of one year's notice to them before such lands could be taken up.⁵¹ In Maryland the idea always prevailed that owners of land had a kind of preferable claim to vacant tracts adjoining, and particularly to any surplus within their bounds.⁵² In 1679 a decision of one of the courts in the Delaware region under Andros's jurisdiction granted to a successful litigant the preference before any others to take up extra land within their bounds, other than the patent called for.⁵³ In 1731 a similar preference in taking up an overplus was granted by a South Carolina statute to a certain claimant.⁵⁴

Preference in land grants was also given for miscellaneous reasons: as in Maryland for the discovery of escheatable lands;⁵⁵ in New York for the purchase of Indian lands on a license from the governor; and in Pennsylvania and some other colonies, in case of conflicting rights, to the one who had actually settled

⁵¹ Hening, II, 300. Law passed 1672, and repeated at intervals till after 1783. Also *Pub. Acts, N. C.*, I, 13.

⁵² Kilty, 149. Note.

⁵³ Hazard, *Annals of Pa.*, 463.

⁵⁴ S. C., *Statutes*, III, 303.

⁵⁵ Kilty, 102, 174.

and improved the grant.⁵⁶ In this last practice, of giving preference on the score of improvement, existed the germ of the later preëmption and homestead laws. The term "improvements" in the ordinary sense referred to all the changes wrought by the settler in order to make a home in the wilderness. In the strict legal sense it often meant much less. In North Carolina and Virginia, to build a house or hut on the land, or to clean, enclose, and cultivate a part of the land, constituted an improvement.⁵⁷ This requirement could be easily satisfied by raising a crop of corn. In the northern colonies there was an equally simple interpretation of the term. Governor Tryon wrote the earl of Dartmouth concerning the New Hampshire grants that with the inhabitants of America possessions and improvements were not restrained to houses and barns, and lands enclosed, and prepared for the scythe and plough, but were often applied to "a Tract of girded Trees surrounded by dry loose brush, and a square Hutt made of unhewn Logs, and covered with Bark."⁵⁸

Virginia always showed a jealous concern for the improvements made on a tract. If for any reason, the land had to be forfeited (usually because of settling on property belonging to others), a valuable consideration was to be allowed the occupant for improvements.⁵⁹ The frequent repetition of this law shows such cases were constantly recurring. Such compensation was the general rule⁶⁰ in the colonies. As early as 1633 the Massachusetts Bay Company paid William Blackstone for his right in and to the peninsula on which Boston was built, though he had no regular title and his only improvement appeared to be a cottage.⁶¹ Cotton Mather refers to Blackstone as one "who by happening to sleep first in an old hovel upon a point of land there, laid claim to all the ground whereupon there now stands the Metropolis of the whole English America until the inhabitants gave him satisfaction."⁶² In 1771 the Lords of Trade in-

⁵⁶ *N. Y. Doc. Col. Hist.*, VIII, 374.

⁵⁷ *Hening*, X, 40; *Pub. Acts, N. C.*, I, 264.

⁵⁸ *N. Y. Doc. Col. Hist.*, VIII, 385.

⁵⁹ *Hening*, I, 260, 349, 443; II, 96.

⁶⁰ In R. I. it was voted, regarding a piece of land forfeited to the town, that "if there bee anything about it that enjoyed usefull, he is to be satisfied for it." *Rec. of Col. of R. I. and Prov. Pl. in N. E.*, I, 78.

⁶¹ *Memorial Hist. Boston* (Winsor. ed.), I, 83-85.

⁶² Cotton Mather, *Magnalia* (Hartford, 1855), I, 243.

formed the privy council that there had always been in the plantations an attention to actual settlement and improvement, however disputable the titles on the ground of the grants themselves. It was this idea which underlay the instructions sent by Andros in 1679 to one of his subordinates, that in giving land to newcomers, "former undertakers were to be preferred."⁶³ This consideration prevailed in promising settlers in a debatable region the preference to the land whenever a decision should be made.⁶⁴ It was this attitude of public opinion that encouraged squatters and caused them to regard improvements as a good title to land. Governor Tryon wrote of the early Green Mountain Boys, "what they improve of the vacant lands they hold as their rightful possessions, and to persuade them to a different doctrine may require a superior force to what they can oppose."⁶⁵ But leniency such as the British board of trade had in mind was shown chiefly to settlers who had observed some form of legality in taking up land, and through no great fault of their own had come to grief. The recognition of "squatter rights" based on residence and improvement alone, unsupported by a vestige of legal claim, did not obtain till a late period in the colonies; it came about tardily and as a surrender to sheer force of circumstances.

DEVELOPMENT IN PENNSYLVANIA

As Pennsylvania was the first colony to deal with the squatters on any considerable scale, it was naturally the first to develop principles of action regarding them. The plans of William Penn did not include any other kind of title than that gained by purchase from himself. But from a very early period the land officers found it expedient to make allowance for improvements, and the proprietors acquiesced, for awhile.⁶⁶ When, however, the multitude of immigrants began to pour in after 1730, in most cases unable to purchase lots, the Penns took an opposite view. They felt themselves in destitute circum-

⁶³ Hazard, *Annals of Pa.*, 415.

⁶⁴ *Va. Hist. Mag.*, XIII, 290.

⁶⁵ *N. Y. Doc. Col. Hist.*, VIII, 310, 403. See also *N. Y. Hist. Soc. Colls.*, 1881, p. 367.

⁶⁶ Shepherd, *Prop. Govt. in Pa.*, Columbia Univ. *Studies*, VI, 49.

stances, and were extremely unwilling to have their revenues in any way impaired. They therefore sent directions that people who had settled on any lands could have them at the price in vogue at the time of settlement with interest from that time, but minus the value of the improvements; those who could not do this were to be obliged to pay a quitrent proportioned to the purchase money.⁶⁷ This could not be enforced against the squatters who held their ground and would not be evicted. The secretary was later instructed to allow settlers to pay only the interest, but not to grant them any titles.⁶⁸ In 1738, it was proclaimed that such unauthorized persons would be prosecuted, and their lands granted to others if the land regulations were not obeyed. Such threats were futile. The proprietors were utterly unable to prevent the occupation by squatters, particularly on the frontier. It became clear that unless some *modus vivendi* was established with these determined, land-hungry men, who could not be driven away, large revenues would inevitably be lost. Concessions at the time might secure some financial return in the future. Accordingly, the land office connived at or permitted many usages it was powerless to prevent and there arose besides the regular office rights, many particular, local species of land titles. Among others was the right by improvement, according to which any one who built, cleared, and resided on land not sold or appropriated by the proprietors, could acquire a title; this was called the "law of improvements." These improvements were bought and sold and rented.⁶⁹ And by the middle of the eighteenth century, one of the two regularly accepted modes of granting land in Pennsylvania was to issue warrants of survey for lands already settled and improved (a longer or shorter time earlier), on payment of two-thirds the purchase money; when the survey was completed and remaining dues paid a full title was granted.⁷⁰ This was done in a multitude of cases.⁷¹ In time, squatters were even invited to settle in the

⁶⁷ *Penn Letter Book*, John and Thomas Penn to J. Logan, April, 1730. Quoted by Shepherd, *Prop. Govt. in Pa.*, p. 51.

⁶⁸ Huston, *Original titles*, etc., 283.

⁶⁹ *Pa. Archives*, 2nd Series, II, 683.

⁷⁰ *Col. Rec. Pa.*, IX, 380. Letter of John Penn to Earle of Shelburne. 1767.

⁷¹ *Pa. Archives*, 3rd series, I, 31-48; 1st Series, I, 699; II, 654.

wilderness on the line of march of the armies during the Indian wars and were promised the preference in the event of sale of the land. Towns also sprang up, in which much of the soil was appropriated without show of right.

In cases of dispute over title, in which one claimant held under warrant of survey and the other by previous settlement and improvement, the latter title was usually judged superior.⁷² In settling the land troubles with Virginia regarding the western counties, a compact between the two states provided that a prior improvement under Pennsylvania prevailed against a Virginia certificate.⁷³ So generally accepted was this idea that actual settlement conferred a claim that the proprietors felt it necessary to declare, after the treaty of Stanwix, that improvements on the newly purchased lands would give them *no advantage whatever*.⁷⁴ And in 1769 the board of property refused to allow claims to preëmption that were entered by persons who had made improvements on lands that were on the point of being granted to an association called the Pennsylvania Regiment.⁷⁵ In the spring of that year, when the land office opened, the right of preëmption was again granted, this time to all those who had settled plantations in the new tract, especially those who had done so by permission of the commanding officers.⁷⁶

LEGISLATION BY VIRGINIA AND NORTH CAROLINA

Thus, preëmption became a fixed principle in the Pennsylvania land system. Although this was the case, the new state, after the assertion of independence, was slower than Virginia and North Carolina in establishing it as a general rule. Not till December, 1784, was a law passed granting preëmption rights. By that act, the squatters who, since 1768 had persisted in settling the western lands in defiance of all warnings and prohibitions, however stringent, at length reaped the advantage of their persistency, though ostensibly rewarded for their services

⁷² *Pa. Archives*, 3rd Series, I, 143, 149, 174, 345, 369, et passim.

⁷³ *Laws of Commonwealth of Pa.* (1810), II, 131.

⁷⁴ *Ibid.*, II, 127.

⁷⁵ *Pa. Hist. Soc. Colls.*, I, chap. 17, pp. 105, 114. Article by James H. Castle.

⁷⁶ *Laws of Commonwealth of Pa.*, II, 127.

during the Revolution. The privilege of preëmption to not more than three hundred acres was extended to all settlers who had taken up land prior to 1780.⁷⁷

The British board of trade was in complete accordance with the spirit of indulgence toward actual settlers. In considering the complicated problem of the New Hampshire grants in 1771, they expressed the view that "there always ought to be in the Plantations an attention to actual Settlement and Improvement, however disputable the titles might be on the ground of the grants themselves; and that in Cases where the possessor does not interfere with the Rights of others, ought to have preference to any other consideration."⁷⁸ For this reason they thought that persons who had actually cultivated and improved lands in consequence of the grants from the New Hampshire government, should be left in entire possession of their particular tracts, and not on any account be disturbed by holders of later warrants from the governor of New York. And a plan was suggested by which a plot and description of the lands thus improved might be registered in the county court, which entry should be full evidence of title in case any question should arise.⁷⁹ It was felt that the difficulties of early settlement on lands exposed to the incursions of the savages and French made it imperative in justice and equity that the original proprietors should be quieted in their possessions.

Before the war was over, both Virginia and North Carolina passed laws extending the right of preëmption to all settlers on the frontier. They were forced to this step as Pennsylvania had been. The region around the "western waters," which was filling up with wonderful rapidity, had become the chosen field for the squatter and he was making the most of his opportunity. Legal methods of taking up land were largely in abeyance. The land office was too distant, affairs too confused, and methods too dilatory to suit the practical impatient pioneers. They believed in doing first, and in attending to the formalities at a more convenient time, if at all. Eagerness for land was keener than

⁷⁷ *Laws of Com. of Pa.*, act of Dec. 21, 1784.

⁷⁸ *N. Y. Doc. rel. Col. Hist.*, VIII, 274-277.

⁷⁹ *Ibid.*, 276.

ever, and in the sharp competition to establish claims to the best tracts, a great variety of "rights" sprang into existence. The customary manner of acquiring a claim by clearing a patch of ground, building a cabin, and raising a crop of corn was too lengthy a proceeding for many of the newcomers.

Jefferson wrote in 1780 that the irregular claims and settlements which had covered the western country had become so extensive that no prudent man could venture to locate a new claim, and so numerous that in the common administration of justice it would have engrossed the whole time of the ordinary courts for years to have adjusted them.⁸⁰ "So multifarious were they at the same time, that no established principles of law or equity could be applied for their determination; many of them being built on customs and habits which had grown up in that Country, being founded on modes of transmission peculiar to themselves, and which, having entered into almost every title could not be absolutely neglected." Such species of titles as "tomahawk improvements," "cabin rights," "corn rights," and "sugar-camp rights"⁸¹ were common. These rights were bought and sold just like more extensive improvements, or warrants, or land scrip.

"Tomahawk" rights were acquired by deadening a few trees near the head of a spring and marking the bark of some one or more of them with the initials of the name of the person who made the improvement.⁸² This practice was in the nature of a caveat issued against locations by others, and probably arose in the older colonies. In Maryland, at about the period of Cromwell's protectorate, Kilty says people began making locations for the purpose of guarding the lands they had in view from the operation of younger warrants until they should find it convenient to make their surveys; and at the same time grew up the custom of marking trees on lands the person had in view, preparatory to actual survey. The surveyor-general himself gave permission to do this.⁸³ Many pioneers believed that land north

⁸⁰ Jefferson, *Writings*, II, 293.

⁸¹ *American State Papers*, Public Lands, III, p. 2.

⁸² Doddridge, *Notes on the Settlement and Indian Wars of W. Parts of Va and Pa.*, p. 100.

⁸³ Kilty, p. 85.

of the Ohio could ultimately be got "for taking it up," as it had been in the western parts of Pennsylvania and Virginia; in anticipation of this a large tract of country between the Ohio and Muskingum was parcelled out in tomahawk improvements, not confined to such small tracts as the usual four hundred acres, but including very large areas. "Many of the land jobbers of this class did not content themselves with marking the trees at the usual height, with the initials of their names; but climbed up the large beech trees, and cut the letters in their bark from twenty to forty feet from the ground. To enable them to identify those trees at a future period, they made marks on other trees around them as references."⁸⁴ In the summer of 1786, Colonel Harmar wrote the secretary of war: "These men on the frontier have been accustomed to seat themselves on the best of lands, making a tomahawk right or improvement, as they term it, supposing that to be a sufficient title."⁸⁵ There could not have been much efficacy in such improvements. Occasionally, people who wished to settle on the tracts thus staked off bought up the tomahawk improvements rather than enter into quarrels with those who had made them. But sturdy, determined settlers usually disregarded them, and held their own against claimants under such rights.⁸⁶ Often a man would not insist on his rights gained so cheaply. Isaac Van Meter came to Virginia in 1736 and made a tomahawk improvement on some lands immediately above the "trough." He then returned north, and did not come south again till 1740, at which time he found a settler on his land. He bought him out and then moved there himself.⁸⁷

Cabin rights and corn rights were rights to land acquired by building a log cabin or raising a crop of corn. But these did not have much vogue till after the Virginia land legislature of 1779.⁸⁸ In this year, Virginia found it necessary to give way to the torrents of people pouring into the region now formed into West Virginia and Kentucky and to open a land office. No title by settlement had been recognized under the royal gov-

⁸⁴ Doddridge, *Notes on the Settlement and Indian Wars*, etc., 104, 105.

⁸⁵ *St. Clair Papers*, II, 17.

⁸⁶ Doddridge, *Notes*, etc., 100.

⁸⁷ Samuel Kercheval, *Hist. of the Valley of Va.*, p. 46.

⁸⁸ Hening, X, 35-35.

ernment,⁸⁹ but now the laws were passed which granted not only preëmption rights to new settlers, but also introduced the generous system of "settlement rights." The two are so intimately connected that they must be explained together. Out of the medley of claims a few definite ones were selected as the basis for a title. Settlement rights were rights to four hundred acres of land allowed to every person or family who had really settled or caused at their cost others to settle themselves before January 1, 1778, on any waste lands to which no one else had any legal right or claim.⁹⁰ For this they should pay practically two cents an acre—two dollars and a quarter for every hundred acres. Settlement was defined to mean making one crop of corn in that country, or residence there of at least one year since the time of first settlement. Those who had settled in villages before January 1, 1778, were also to receive for each family four hundred acres, adjacent to the village.⁹¹ Any settler who had had a legal survey made for him since 1763 for less than four hundred acres might claim enough adjoining waste land as would make up that quantity. In addition to these generous gifts, preëmption rights to 1,000 acres of unappropriated land were allowed to all who, previous to January 1, 1778, had selected a tract and either built a house on it or made other improvements. To all other actual settlers since January 1778, preëmption rights only to the standard amount (400 acres) were granted at the state price. The same privilege, practically, was granted to the squatters on companies' lands, as the law required the company to confirm to them their titles upon payment of the price (plus interest) at which such lands were offered for sale when they were settled.⁹² Great care was exercised to safeguard the possessions of the early settlers. Locations by officers and soldiers on lands actually settled were void; the register of the land office was ordered to prevent people claiming under warrants for preëmption from interfering with those claiming under certificates of settlement. Due preference was to be given the latter.

⁸⁹ Ibid., 542.

⁹⁰ Hening, X, 35-45.

⁹¹ Ibid., 39.

⁹² Hening, X, 42.

These ideas were not new in Virginia thought and practice. The head-right system was ingrained in Virginia traditions. Jefferson, in his *Summary View* of 1774, had declared that each individual of a society might appropriate to himself such lands as he found vacant and occupancy would give him a title.⁹³ And in the proposed Constitution for Virginia drawn up by him in 1776, it was provided that "every person of full age neither owning nor having owned fifty acres of land (should) be entitled to an appropriation of fifty acres or to so much as shall make up what he owns or has owned, fifty acres in full and absolute dominion."⁹⁴ An early preëemption act was passed in 1776 by the convention of delegates.⁹⁵ Inhabitants of the western frontier had sent in petitions complaining of the exorbitant demands on them by people pretending to derive titles from Indian purchases and deeds. The convention ruled that all persons who were actually settled on any unlocated or unappropriated lands in Virginia to which there was no other just claim, should have the preëemption or preference in the grants to such lands. This appears to be the first use of "preëemption" as applied to individual settlers. The legislation of 1779 was not only a recognition that some allowance was due first settlers for the charge and risk they had incurred; it was a legal expression of a wide-spread sentiment that the value of improvements compensated for any lack in the title, that the squatter was really a benefactor to the state, and not a trespasser. This was natural as in most of the colonies from the beginning the need of settlement had been emphasized. Land had been freely offered to any one who would actually take up his residence in the wilderness, and most grants were conditioned on settlement within a given time and lapsed if this were not done. All this made settlement the predominant consideration, and so long as that was carried out, it seemed a small matter whether it anticipated or followed a regular grant. And those who bore the burden of actually cultivating the soil and introducing some ele-

⁹³ Jefferson, *Writings*, I, 444-445; also see Hening, II, 448; III, 206.

⁹⁴ Jefferson, *Writings*, II, 25.

⁹⁵ *Proceedings of the Convention of Delegates*, etc., 1775. Pamphlet publ. in Richmond, 1816. p. 63.

ments of civilization could not be regarded, except by the wealthy landholders, in any but an indulgent view, even if they had no legal right thus to occupy the land. A good defence of the squatters was made in 1738 by a Pennsylvania surveyor in a letter concerning one settler without valid title: "It is my opinion that the Improving and cultivating the Land in Pennsylvania is a General Interest and Credit to the Province in Part as well as to the laboring man that gets his living upon the Improvements, for it adds to the supply of the Market at Philadelphia, and elsewhere among ourselves, besides the Commodities that's transported and the addition that is made to the Bulk of our Trade; and besides, the poor settlers under that Favorable Indulgence of our Worthy Proprietors do their suit and service, pays Taxes, maintains Roads as well as free holders." ⁹⁶

Jefferson was a member of the Virginia assembly that framed the land legislation, and it is probable, knowing his favorable views of land allotment, that he was influential in procuring many of its generous provisions. It is interesting to notice that when Jefferson was president, later on, he took active measures against the squatters. In 1807 he ordered the secretary of war to expel the "intruders" who had settled in large numbers on the recent purchase from the Chickasaw and Cherokees, and particularly on the Yazoo tract.⁹⁷ They were also driven off from the Indian lands into which they had pressed. Those men on the north side of the Red river, who were conveniently situated to support New Orleans, he allowed to remain.⁹⁸

In Tennessee, even earlier than in Kentucky, settlement was rewarded by preëmption rights. Before the Revolution, many of North Carolina people had made entries for land in the West, but on the outbreak of war were unable to complete their titles; consequently they settled and improved their tracts with the intention of becoming lawful proprietors later on. Others had actually improved vacant lands without any just claim by entry in any office. In November, 1777, the assembly of North Carolina

⁹⁶ *Pa. Archives*, 2nd Series, VII, 217.

⁹⁷ Jefferson, *Writings*, I, 331, 339.

⁹⁸ *Ibid.*, 334.

opened a land office for the western county of Washington;⁹⁹ every settler was allowed to take up 640 acres for himself, and one hundred acres for his wife and each of his children at the small price of forty shillings per hundred acres. In granting the land, preference over all others was given to those first settlers, whether or not they had a claim by virtue of former entry. Occupancy was thus sanctioned; it gave a title. Payment was not required till January, 1779. Any surplus over 640 acres was to be sold at five pounds per hundred acres. In 1782, equal rights of preëmption were allowed to the settlers on the Cumberland; 640 acres to every family or head of family, and to every single man of the age of twenty-one and upwards who had settled before June 1 1780.¹⁰⁰ In 1784, settlement rights were granted to a number of persons who for various reasons could not benefit by the act of 1782, though especially deserving because of their conduct and services against the Indians during the war.¹⁰¹ This preference to first settlers continued to be a favorite principle in the legislation of Tennessee.¹⁰²

ATTITUDE OF MASSACHUSETTS

Far different from the southern and middle states' attitude was that of Massachusetts toward squatters. The New England state regard them as trespassers, illegal possessors, pure and simple, and was indignant when it learned in 1781 that many persons had entered on the unappropriated lands in Maine, and that they were continuing to hold possession thereof "contrary to law and justice."¹⁰³ The squatters themselves had a very different view as is evident from the tone of a petition sent to the general court in 1778, in which the assembly is reminded of its obligations to them.¹⁰⁴ Among other things, they begged leave "to suggest to your Honors that the opening the Wilder-

⁹⁹ *Public Acts of North Carolina*, I, 204-208.

¹⁰⁰ *Public Acts*, N. C., I, 306. See Haywood, *Tenn.*, 218-219. These grants amounted to 309,760 acres. *Annals*, 2nd Cong., 2nd sess., 1037.

¹⁰¹ *Ibid.*

¹⁰² *Congress. Debates*, V, 207. Jan. 13, 1829.

¹⁰³ *Acts and Laws of Mass.*, (Boston, 1890-1894), chap. 113, p. 429, May 1, 1781.

¹⁰⁴ Butler, *Hist. Farmington, Me.*, p. 29.

ness and turning the Desert Into Wheatfields, while it Supports Individuals, is of great advantage to the publick," therefore they prayed for a grant on such conditions and at such price as justice and prudence would warrant.

Massachusetts never adopted any uniform, settled policy in regard to the settlers, but by means of laws, grants, deeds, and commissions, it attempted to settle the matter in each individual case, as need arose. The situation was perhaps, too complicated for one general law like Virginia's. The unappropriated public lands were only a part of the areas involved; there were, besides the large private estates belonging to wealthy companies and to individuals, townships owned by absentee proprietors, and those offered for sale by the state. When the general court found out during the latter part of the war, that settlers were streaming into the wild lands in Maine, it at once appointed a committee to investigate these "trespasses;" and in case the occupant was willing to make recompense for any damage done to the commonwealth, the committee was instructed to accept it and discharge the trespasser; or, if he were willing to buy at a price fixed by the committee, this was to be reported to the general court for consideration.¹⁰⁵ With a harsh insistence on the words "trespasser" and "illegal possessor," the act provided for the publication of the resolve in the Boston and Worcester papers in order that the persons concerned might "have an opportunity of availing themselves of this instance of lenity in government and save expense which might otherwise be incurred by law suits."¹⁰⁶ This imperious measure was doubtless expected to settle the matter once for all, but it was far from having that effect. The state found it expedient to recede gradually from its uncompromising position, and in the end to show the lenity it pretended to in the beginning. The first provision for squatters was made in some of the township grants of 1785.¹⁰⁷ The new proprietors were required to allow every settler (no longer called a trespasser), resident there prior to January 30, 1785, fifty acres, so laid out as best to include his improvements; and the liberty of buying, in

¹⁰⁵ *Acts and Laws, Mass.*, chap. 113, p. 430. May 1, 1781.

¹⁰⁶ *Ibid.*, p. 431.

¹⁰⁷ *Ibid.*, pp. 407-408. Mar. 15, 1785; p. 646. June 20, 1785.

addition, fifty acres of the unlotted land at no more than three shillings an acre. If any improvements were left outside the share received, the settler might buy the land on which they were made, as if it were in a state of nature, or receive an allowance for them, as he should himself elect. These privileges were granted in consideration of the performance of settlers' duties. The squatters were thus allowed virtual settlement and preëmption rights. Possibly the fear, at first, of encouraging the practice of squatting, and of repelling purchasers if too much land was reserved for the settlers, caused only fifty acres to be given without price. The squatters in the Berkshires were obliged to pay for their lands the sum they were worth at the time, minus the improvements;¹⁰⁸ thus they were less favored than those in Maine. From 1785 on, one hundred acres was the standard quantity granted in order to quiet settlers having no title, and three shillings an acre was the usual price.

But the state had not yet become reconciled to the policy toward squatters. When in 1786 it was discovered that many more persons in the last two years had taken up lands illegally in the eastern counties, and that others were settling in like manner, "presuming upon the indulgence of government that they may be quieted in their possessions," the governor was ordered to issue a proclamation forbidding persons settling on the commonwealth's lands or committing any trespass, as they would avoid being dealt with according to law.¹⁰⁹ In 1788 this severity was again dropped, and a law passed which entitled any one who had settled on the public lands before January, 1784, on payment of five Spanish milled dollars, to a deed of one hundred acres, to be laid out, in the standard manner, so as best to include his improvements.¹¹⁰ The general court thus practically surrendered to the squatters as Virginia, Pennsylvania, and New York had done much earlier.

¹⁰⁸ *Ibid.*, chap. 66, p. 660. June 28, 1785.

¹⁰⁹ *Ibid.*, chap. 50, p. 365; Oct. 21, 1786.

¹¹⁰ *Ibid.*, chap. 80, pp. 865-868. March 26, 1788.

TERMS MADE BY PRIVATE PROPRIETORS

With regard to the people of the townships, the legislature usually provided that each settler should be allowed one hundred acres, and then left the proprietors and the settlers to come to terms between themselves. Sometimes a special resolve was passed, establishing the conditions and terms in detail. In especially difficult cases a commission was appointed to arrange matters.¹¹¹ These measures did not however, bring peace and happiness to the Maine people. The lack of uniformity in treatment by the state and by the private proprietors caused the less favored to feel keenly the hardships of their position. The squatters were also at a disadvantage in dealing with proprietors or their agents.

These agents had usually a considerable financial interest in the townships, and were inclined to drive as favorable bargains for themselves as possible. When the proprietary agent (himself one of the chief proprietors) came to the town of Penobscot in 1788, to mete out land to the settlers agreeable to a resolve of the general court, he disregarded entirely the wishes of the settlers' committee and insisted on his own construction of the resolve. The committee could not possibly make any adjustment with him at the time.¹¹² They stood for the reasonable demand that settlers whose lots were so situated as to render it very inconsistent, if not impossible, to have one hundred acres set out in one lot, should have such deficiency made up to them elsewhere. The agent steadfastly refused to agree to what he declared was never meant by the court.

There can be little doubt that these land troubles contributed much to alienate the people of Maine from the Federalist party and to give them that strong Republican bent they exhibited for many decades. It is clear that the contribution of the North toward fixing the principle of preëmption was small. "Squatting" did not receive the public sanction that it did in Virginia and North Carolina and westward. The right of preëmption was reluctantly granted simply as a temporary expedient to adjust existing conditions.

¹¹¹ W. C. Hatch, *Hist. of Industry, Me.*, pp. 30, 84.

¹¹² G. A. Wheeler, *Hist. Castine, Penobscot, Brooksville*, pp. 67, 68.

Individuals as well as state governments and companies had to deal with squatters, and they were as a rule less lenient. The most conspicuous instance of such cases is Washington's experience with the intruders on his estate at Miller's Run. As has been seen, some Scotch-Irishmen had settled there before Dunmore's war. When Washington made his trip in the fall of 1784, into the western country, he found these people still living on his lands; they were confident they could not be dispossessed and, to a man, determined to stand suit and abide the issue of the law rather than to buy a title. Washington insisted on pressing his claims, as he probably felt that to yield would establish a precedent which would endanger his hold on his other estates, and might work injuriously to other landholders. A trial was held, though, owing to the temper of the squatters, success was little likely to bring satisfactory results to Washington.¹¹³

General Knox, another example of this class, found over five hundred squatters on his large estate in Maine comprising the present counties of Waldo and Knox, of which he became the owner about 1792.¹¹⁴ Owing to the original deed which transferred to Knox only such parts of the territory as the grantors were in actual possession of, every settler's lot had to be entered by the attorney according to the ancient ceremony of taking possession by "livery and seizin" with turf and twig.¹¹⁵ A price was fixed for the land already settled, and many paid it, and received deeds; but some resisted, especially some Connecticut immigrants on Islesboro, who declared that the island was outside of Knox's possessions, as they thought its centre more than three miles from the mainland.¹¹⁶ After repeated petitions from the settlers the general court in 1797 appointed a committee, one of whom was Nathan Dane, "to settle and declare the terms" and rights of the inhabitants, which committee decided

¹¹³ Hulbert, *Washington and the West*, pp. 27 ff. Contains Washington's diary of September, 1784.

¹¹⁴ *Bangor Hist. Mag.*, V, 126-127; also Cyrus Eaton, *Hist. Thomaston, Rockland, etc.*, II, 209.

¹¹⁵ *Ibid.*

¹¹⁶ John Pendleton Farrow, (Master Mariner) *Hist. of Islesboro, Me.*; this contains copies of original documents from the Knox papers, and from the *Mass. Archives*, pp. 5-9; 16-20 ff.

that each settler should be quieted in the possession of one hundred acres, at two dollars and a quarter an acre with interest from that date. This did not satisfy some and they refused to have their lands surveyed. Knox warned them that such action could only cause an enhancement of the price.¹¹⁷ It does not appear what the outcome was. When in 1799, Knox came into possession of the four townships of Hampden, Bangor, Newburgh, and Hermon, his title was conditioned on quieting the settlers with the usual amount. This was a wise precaution as the first two towns were quite thickly inhabited and had been incorporated, and the other two had not a few inhabitants, and yet no person had any other than a squatter title to his home and farm.¹¹⁸

Henry Rust, a Salem man, who bought 6,000 acres from the state in 1787, treated the settlers very kindly, selling the lands at a nominal price, one-half dollar an acre, which could be worked out on his plantation at half a dollar per day. He also erected a blacksmith shop and a saw and grist mill which were a great convenience to the people.¹¹⁹ It is mentioned that he distributed window glass among the settlers,, a valuable present at the time.

It is interesting to note the different stages in colonial procedure towards squatters. At first, there was strong opposition to such unauthorized settlement, official prohibitions, proclamations, and actual eviction. As such means failed to check the movement, a demand for immediate payment, plus interest, was made, with threats of removal if not complied with. This too had to be abandoned. An adjustment to conditions followed, and preëmption rights were allowed with payment at the settler's convenience. The final step was a donation, or granting of

¹¹⁷ Farrow, *Hist., Islesboro, Me.*, p. 8. Document from Knox papers. The hardship that must have been worked, even on demand of a small price, may be seen from the case of William Burns who had to pay \$81 with interest for 67½ acres of land which was described by the surveyor as being "20 acres middling; 30 acres swamp, poor cold land; 10 acres barren ledges; 17 broken with ledges; upland broken with ledges so that there is not more than one and one-half acres of plowing in a piece. No water in a dry time except one spring." (*Ibid.*, pp. 18-19.)

¹¹⁸ A. W. Paine, *Territorial Hist. of Bangor, and Vicinity*, in *Me. Hist. Soc. Colls.*, IX, p. 232.

¹¹⁹ Wm. Berry Lapham, *Centennl. Hist. of Norway, Me.*, 27-38, 43. David Noyes, *Hist. of Norway, Me.*, 15-16.

settlement rights, sometimes accompanied by preëmption rights to additional territory. The nation ran through a similar course of action later on. No colony observed every stage. Pennsylvania never got beyond permitting preëmption. Virginia and North Carolina were most indulgent toward squatters and had no preliminary struggles with them. Both states began with preëmption rights, but Virginia went farthest of all in granting a munificent estate through settlement and preëmption rights combined. New York and Massachusetts made little of preëmption claims but granted settlement rights almost wholly. New York had little trouble with the squatters, and this was easily settled by granting a title for five hundred acres in some cases, in others two hundred, to all improvers of vacant lands. Pennsylvania and Massachusetts were alike in their early hostile attitude towards such settlers but they differed in their method of dealing with them. The middle state fell upon preëmption as the solution of the difficulty, but the New England assembly found it simplest to give each squatter a homestead.

Thus everywhere in the colonies, the squatter appeared, and in every one he gained his point. His persistency was justified. Occupation and improvement was at length recognized as valid basis for a title, and what was at first only custom became law after many struggles. Squatter settlement reached its greatest proportions in Virginia, North Carolina, Kentucky, and Tennessee, and was extended into the national public lands, by men from those states, so that it may be called primarily a Southern institution—it never developed much in the north; with northern men it did not become a fixed tradition which they carried west with them.

From the first, the nation regarded its new public domain primarily as the source of funds which were so urgently needed. In this respect it was in an identical position with some of the former colonies, particularly Pennsylvania, and with many of the new states; consequently it felt the same intolerant attitude toward the squatter whose presence was inconsistent with profits or legal procedure. It was natural that Congress should be uninfluenced by the indulgent legislation of Virginia and North Carolina, which states had always favored settlement rather than

revenue, but it is to be wished that it might have profited by Pennsylvania's long experience, and established at once some method of adjustment or compromise, and thus escaped the long struggle and the mass of legislation that ensued before the final surrender to the squatter's persistency. But instead, the policy of summary removal by force, such as Pennsylvania had used in 1750 against the settlers on Indian lands only, was adopted by the new national landlord against all squatters indiscriminately. At this same time Massachusetts was displaying the same spirit, though not the same methods, toward unauthorized settlers on her eastern lands. Colonel Harmar, the federal military officer north of the Ohio, had, among other duties, that of preventing illegal encroachments on the public lands. The commissioners for Indian affairs had instructed him, January 24th, 1785, to "employ such force as he may judge necessary in driving off persons attempting to settle on the lands of the United States."¹²⁰ The necessity of such action was soon abundantly proved.

This problem of squatter intrusion was much discussed. In 1785, Pickering advanced the idea, in a letter to King, that encroachments on the public lands would be prevented by ceasing to purchase more lands for an indefinite period, as "few would be hard enough to settle *on Indian ground*." He thought if the purchase extended westward even to the Mississippi, lawless emigrants would spread over the whole of it.¹²¹ Wilson of Pennsylvania, who discussed this with Pickering, had just the opposite idea. He believed the government ought to purchase, because if it did not, emigrants would settle on the Indian lands and directly bring on a war.¹²² Events of that same year and the following ones proved Mr. Wilson knew better than the New England Federalist, the true temper of these frontiersmen.

¹²⁰ *St. Clair Papers*, II, 3, 28.

¹²¹ Rufus King, *Life and Corresp.*, I, 104-105.

¹²² *Ibid.*, 106-107.

ADOPTION INTO NATIONAL PRACTICE

No method but uncompromising opposition was observed towards the squatters till well into the 19th century. Then, after a long struggle, preëmption rights which had been allowed in nearly every state before 1800, were granted. These rights were not the outcome of a compromise with these men, as was the case in Pennsylvania in colonial days. They had been early adopted into national practice, in special local cases. The first instance was in 1799 in the case of certain people who had bought land of John C. Symmes, and then, through a mistake in the patent, found that their lands were outside his tract. They were given the right of preference in buying the lands of the United States on credit.¹²³ Further preemption rights were allowed them in 1801.¹²⁴

¹²³ *Land Laws of the U. S., Local and Temporary*, I, 12, 13.

¹²⁴ *Ibid.*, 28.

CHAPTER VIII.

RESERVATIONS OF NATURAL RESOURCES.

The principle of the reservation of natural resources, such as mines and forests, for governmental control is an important one in the national land system, but little data can be found by which to trace its evolution. The royal charters for colonization commonly contained the stipulation that one-fifth of all gold and silver should be reserved to the crown.¹

But in colonial practice only scattered instances of this principle are found. The instructions of the Maryland proprietor in 1733 contained a clause reserving in all grants one-tenth part of all mines.² Earlier instructions of 1673 provided that all royal mines be excepted in the cases of certain sales and leases. Sometimes both Lord Baltimore and Penn reserved large areas for the purpose of securing control of land thought to contain mineral deposits.³ A grant of land, dated 1750, in the "Welsh tract," South Carolina, reserved one-tenth of all gold and silver mines.⁴

The Susquehanna company of Connecticut men in 1763 reserved for the use of their company all beds of mine ore and coal within a group of towns ordered for settlement. This reservation was repeated in the regulations of 1768.⁵

In 1779 Virginia abolished the reservation of royal mines along with quitrents and other conditions.⁶ The North Carolina pre-

¹ See Poore, *Charters and Constitutions*, I, 257, 776, 812, 926, 943-944; II, 1380, 1391, 1510, 1890, 1898, for a few instances. The Virginia charter of 1606 reserved to the crown in addition to the gold and silver, one-fifteenth of copper, but in the other charters this was omitted.

² Kilty, pp. 179, 234.

³ Osgood, *Amer. Colonies*, II, 25.

⁴ Gregg, *Hist. of the Old Cheroaks*, 115.

⁵ *Pa. Archives*, 2nd Series, XVIII, pp. 47, 60.

⁶ Henning, X, 64.

emption law of April, 1780, expressly reserved salt springs and licks from the operation of the act. The New York law of May 11, 1784, inhibited the surveyor-general from granting certificates for various tracts, among them a certain ore bed lying eight miles north of Crown Point.⁷

When Congress began to consider plans regarding the new western territory, the idea of making reservations was at once mooted. Silas Deane proposed in 1776 that Congress retain control of one-fifth of all lands, mines, et cetera, within the new state to be laid out, to be disposed of "in such manner as good policy and the public exigencies may dictate."⁸ In 1781, Pelatiah Webster made a suggestion that is very interesting viewed in the light of modern development. He proposed that "all salt licks and mines, and all valuable fossils in which the country greatly abounds, may be reserved and sequestered for public use. A great revenue may grow out of them; and it seems unreasonable that those vast sources of wealth should be engrossed and monopolized by any individual; the vast profits issuing from them should flow into the public treasury, and thereby inure to the advantage of the whole community."⁹ Washington favored this idea. In a letter to Richard Henry Lee, of December, 1784, he asked, "Would there be any impropriety, do you think, Sir, in reserving for special sale all mines, minerals, and salt springs, in the general grants of land belonging to the United States? The public, instead of the few knowing ones, might in this case receive the benefits, which would result from the sale of them, without infringing any rule of justice that occurs to me, or their own laws."¹⁰ A clause to this general effect appeared in the law of May 20, 1785, by which it was provided that there should be reserved within every township "one-third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct."¹¹ In the debate on this ordinance, Monroe, seconded by King, moved that this reser-

⁷ *Laws of State of N. Y.*, (1798) I, 124.

⁸ Sparks, *Diplom. Corresp.*, I, 79-80.

⁹ Pelatiah Webster, *Political Essays on the Nature and Operation of Money*, etc., p. 497.

¹⁰ Washington, *Writings*, X, 428-429.

¹¹ *Journals*, X, 121.

vation be struck out but the motion failed.¹² It had not appeared in the land ordinance of 1784 reported by Jefferson's committee.

Nothing was done by Congress in the line of reserving the timber resources of the public lands, due, no doubt, to the hostility against such a policy aroused during colonial days by the action of the British government. A persistent attempt had been made to stimulate the production of colonial stores for the mother country, and towards this end British officials tried to maintain the king's prerogatives in the woods, thus virtually creating royal forests.¹³ Edward Randolph was surveyor of woods and timber in Maine in 1656, where he marked and registered many large trees for royal masts and bowsprits.¹⁴ A clause in the second charter of Massachusetts Bay, granted in 1691, reserved to the crown all trees twenty-four inches in diameter upwards of twelve inches from the ground, growing upon any tract of land not hitherto granted to any private person; and all persons were forbidden to cut or destroy such trees without a license from the crown.¹⁵ In 1696 the office of surveyor-general of the woods in America was formally created, and Edward Randolph received the appointment. It was in New York and New England where the white pines, so much valued for masts, were plentiful, that the royal prerogative was chiefly exercised. John Adams, in a letter to Maréchal de Castries, in 1784, gave a concise account of the masting business in the eastern part of Massachusetts at this time.¹⁶ The colonists bitterly resented this policy of forest reservations, and much trouble and long disputes arose. In 1718, the surveyor-general of the woods, wrote to the board of trade "Complaining of the Disobedience of the People to the Acts for preserving the Woods."¹⁷ Cadwallader Colden in 1761 wrote to the same authorities that in some cases it was impossible to cultivate ef-

¹² Ibid., 94.

¹³ See E. L. Lord, *Industrial Experiments in the Brit. Col. of N. A.*, for a complete account of the workings of this policy.

¹⁴ Petition of Edw. Randolph, B. T. Plants. Gen., A; 15, quoted by Lord, *Indust. Exper. in Brit. Col.*, p. 87.

¹⁵ Poore, *Charters, etc.*, I., 954.

¹⁶ John Adams, *Life and Works*, (Adams.) VIII, 215-217.

¹⁷ *Doc. Hist. of the State of Maine*, in Me. Hist. Soc. Colls., 2nd series, vol. IX, pp. 417-423.

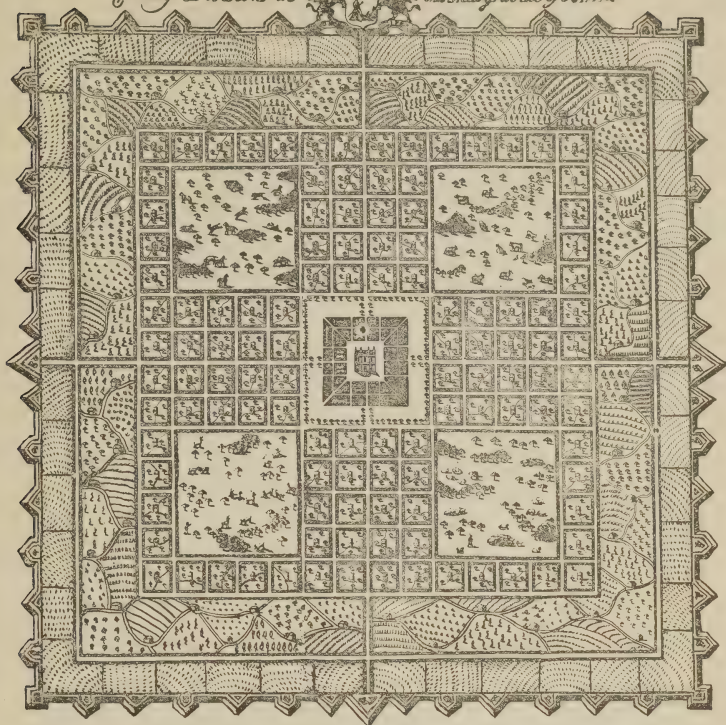
fectually without cutting down pine trees such as the instructions forbade; that this instruction was laying the inhabitants under greater difficulties and hardships than any inhabitants to the eastward under the charter governments or to the westward in the proprietary colonies, and might discourage the settling of lands in the province.¹⁸ The board did not pay much attention to this protest, and as late as 1771, these lords recommended the reservation of extensive tracts "containing a large growth of white pine Trees and of other Timber fit for Naval purposes," within the present Vermont.¹⁹

When the new United States began to legislate regarding lands, no voice was raised in favor of this hated forest policy. But the principle of mineral reservations about which hung no unpleasant memories, was adopted. But such reservations had no practical results as they were soon abandoned.

¹⁸ N. Y. Hist. Soc. *Colls.*, 1876, pp. 64-65.

¹⁹ *Doc. Rel. to Col. Hist. of N. Y.*, VIII, 274-275.

A Plan representing the Town or County Divisions in the Taking the Districts of the Margravate of Krilia



Reduced copy of map accompanying Sir Robert Montgomery's pamphlet, *A Discourse concerning the Designed Es'tablishment of a New Colony to the South of Carolina in the most delightful Country of the Universe*, in Peter Force, *Tracts and other Papers relating to American History*, Volume I, No. 1. See also Charles C. Jones, *History of Georgia*, I, 70-74.

Township A.

Township B.

Township C.

Township D.

1	1	2	2	3	3	4	4
5760 acres wood for the Town A	Commons A Commons	Commons B Commons	Wood for the Town B	Wood for the Town C	Commons C Commons	Commons D Commons	Wood for the Town D
25 lots of 230 acres 1	1	2	2	3	3	4	4

Sketch of the plan of settlement in the military papers appended to *The Historical Account of Bouquet's Expedition against the Ohio Indians in 1764*, Ohio Valley Historical Series, No. 1, page 121.

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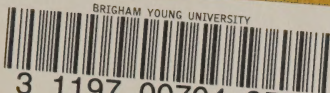
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